



Category/Subject: Incumbent Worker Training (IWT)
Colorado Policy Guidance Letter#: WIOA/WIA-2012-01 (prior 12-03-WIA)
Revise/Replace PGL#: None
Date: March 19, 2012
Distribution: CDLE Management/Finance, State/Local Workforce Directors & Staff, Partners

I. REFERENCE(S)

Workforce Investment Act (WIA) of 1998, Section 133 (b) (4), 134 (a) (3) (IV) (I), 189(i) (4) (B) and WIA Final Rules-20CFR661.400-420 and 20CFR663.145; TEGL 26-09: Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010; TEGL 30-09: Layoff Aversion Definition and the Appropriate use of WIA Funds for Incumbent Worker Training Using a Waiver; Program Guidance Letter (PGL) #11-03-P: Expenditure Authorization (EA) Procedures; PGL #08-06-WIA: WIA and WP Discretionary Grant Quarterly Reporting; Program Guidance Letter (PGL) #11-06-WIA: WIA Waiver Policy.

II. PURPOSE

To establish policy and provide guidelines for the development of local Incumbent Worker Training (IWT) policies and the implementation of IWT initiatives. This Program Guidance Letter also provides general definitions for Incumbent Worker and for Layoff Aversion, includes information on identifying layoff risks, and gives guidance on the appropriate application of WIA funds to conduct incumbent worker training (IWT) using the formula funds set aside waiver, WIA 10% or 25% discretionary grant funds, and other funding.

III. BACKGROUND

WIA section 134(a) (3) (A) (iv) (I) identifies incumbent worker training is an allowable activity utilizing WIA statewide funds. In order to gain additional flexibility for local workforce boards to design local programs for incumbent workers and other underserved populations, the Colorado Department of Labor and Employment (CDLE) applied for a series of waivers over the last several years.

In 2005, USDOL granted Colorado a waiver allowing local areas to set aside up to 10 percent of local area formula allocation funds for adults, dislocated workers and youth to provide statewide employment and training activities identified at WIA Sections 129(b) and 134. In 2006, CDLE this waiver was expanded to allow the set-aside of up to 50% of local WIA Adult and Dislocated Worker funds, but WIA Youth set-asides were capped at 25%.

In 2010, USDOL issued TEGLs 26-09 and 30-09 that provided guidance regarding waivers and the appropriate use of Workforce Investment Act funds for layoff aversion and incumbent worker training. Under these TEGLs, local areas are permitted to set aside up to 20% of local formula funds for incumbent worker training activities, but only as part of a layoff aversion

strategy. In addition, use of WIA Youth funds for set-asides was disallowed and states were required to choose among the following options:

- Set-asides of up to 20% of local Dislocated Worker funds; or
- Set-asides of up to 20% of local Adult funds; or
- Set-asides of up to 10% of local Adult funds and up to 10% of local Dislocated Worker funds

Colorado chose and was granted a waiver for set-asides of up to 20% of local Dislocated Worker funds to be used for incumbent worker training as part of a layoff aversion strategy.

In 2011, Colorado also applied for and received a waiver allowing up to 20% of the Dislocated Worker 25% Rapid Response funds to be used for incumbent worker training as part of a layoff aversion strategy. In addition, Colorado was granted an extension of all waivers through June 30, 2012.

In October 2011, Colorado was awarded an H-1B Technical Skills Training Grant. A portion of the funds can be used to provide industry identified skill upgrade training to incumbent workers. This grant does **not** require that the training be part of a layoff aversion strategy. Industry recognized credentials can be earned through customized (job site) training and at local training institutions, through classroom and distance learning. (Please consult with State guidance on H-1B requirements before co-enrolling WIA participants as eligibility, activity and data entry requirements are different from WIA.)

TEGL 30-09 - Definition of Incumbent Worker: An incumbent is “an individual who is employed, but...does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers” that is part of the WIA sequential delivery of services requirement.

TEGL 30-09 - Definition of Layoff Aversion: US Department of Labor - ETA considers a layoff averted when:

- a worker’s job is saved with an existing employer that is at risk of downsizing or closing; or
- a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no or a minimal spell of unemployment.

Layoff Aversion as Job Creation Strategy: Of the many benefits that accrue to workers, employers, taxpayers, and communities when layoffs are averted, one that is worth significant notice, particularly when IWT is successfully utilized to avert a layoff is **new job creation**. A worker who is retrained, retained and upgraded to a vacancy requiring newly acquired skills will likely vacate a lower-level position. In turn, a vacated entry-level position may be filled from the pool of qualified applicants registered through Connecting Colorado or from the community at large.

IV. POLICY/ACTION

A. State Definition of Incumbent Worker

The regulation at 20CFR665.220 allows the States to “establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services.” For

purposes of this guidance, an eligible incumbent worker is an individual who is employed and meets the eligibility requirements set by the grant being utilized to provide services, such as WIA 25% funds, WIA 10% funds, local Dislocated Worker set-asides, etc.

In addition, when using WIA 25% discretionary grants or local formula set-aside funds for IWT, an incumbent worker, in contrast to other employed workers, must be determined to be at risk of layoff without receiving an IWT intervention. (Please refer to **Attachment 3** for further guidance on identifying the difference between **incumbent** and **employed** workers.)

The State also defines an incumbent worker to be a self-employed individual, who is working as an independent contractor for a business, and is at risk of losing his or her self-employment or contract without an IWT intervention. Such an individual's eligibility may be documented by using copies of:

1. Documents of incorporation
2. Invoices with checks
3. Tax records
4. Self-attestation

B. Development of Local Incumbent Worker Training (IWT) Policies

Referencing the incumbent worker and layoff aversion definitions above, local workforce boards are required to develop policies and procedures for identifying eligible incumbent workers and for implementing incumbent worker training (IWT) initiatives including, at minimum:

1. Definition of eligible incumbent workers (state definition or more restrictive local definition)
2. Criteria and an assessment tool for determining employers at risk of a layoff event
3. Criteria and an assessment tool for determining employees at risk of layoff
4. IWT award approval criteria (may include an optional local priority of service for certain incumbent worker target groups and/or targeted industries)
5. Training cost limits – similar to limits on ITAs, supportive services, *etc.*
6. Design of IWT training agreements/plans and forms, which identify the responsibilities of the participant, the employer/training provider and the Workforce Center Case Manager.
7. Procedures for eligibility, eligibility documentation, enrollment and case file documentation
8. Procedures for quarterly reporting of IWT outcomes, according to the guidance in PGL 08-06: WIA and WP Discretionary Grant Quarterly Reporting

This local policy will apply to all incumbent worker training initiatives, regardless of the source of funding for the initiative, unless a grant has specific requirements not covered in local policies.

C. Development of Assessments

When developing IWT policies to determine at-risk employers and employees, Regions must assess, through an interview or other methods, whether a proposed IWT is relevant to the needs of the employer and the employees, and would likely help to avert a layoff. At minimum, the assessment should be comprised of the following considerations:

1. **Employer Assessment:** The region should determine that
 - The employer is operating and anticipates operations will continue for the foreseeable future.

- The skills of one or more of the employees are, or will ultimately be no longer relevant to the employer’s operational needs, thus these workers are at risk of layoff.
- The employer has or anticipates vacancies requiring new or changing skills not possessed by current employees.
- The new or changing skill requirements are outside of normal skill growth and upkeep that would be provided by the employer.
- Training programs are reasonably available that would prepare at-risk employees to address these skills “gaps” and fill anticipated vacancies.
- The employer demonstrates a commitment to retain at-risk employees who receive IWT, or to provide other tangible benefits.
- The employer demonstrates the willingness and ability to provide employee progress and performance outcome data, as well as employer return on investment outcomes such as layoffs avoided, business expansion, worker productivity increases, process improvements or efficiencies, job creation, etc.

2. Worker Assessment: The region should determine that:

- The worker has not received a formal layoff notice (the purpose of IWT is to avert layoff).
- Unless provided with training, the potentially laid-off worker does not have marketable, in-demand skills (giving emphasis to the needs of the worker’s current employer).
- Unless the worker achieves a specific occupational certification or meets other regulatory requirements, he may be laid off
- New, marketable skills can be attained in a reasonable period of time at reasonable cost.
- The worker is qualified to undertake and complete the proposed skills training.
 - There is a reasonable expectation of continued employment, either with the existing employer or elsewhere, if the potentially laid-off worker attains new skills.

Attachment 2 (TEGL 30-09) contains additional guidance regarding employer and worker assessments.

D. Skill Attainment Restriction

Use of waived local Dislocated Worker formula or WIA 25% funds for IWT is restricted to “skills attainment activities.” When approving IWT, Regions must consider how, besides averting layoff, the skills attained contribute either to the maintenance of employment or increase in employment security for the participant; specifically,

1. Whether the skills attained through the training could help to qualify the participant for a job with changing skill requirements or for higher paying jobs with the existing employer or other employers in the area;
2. Whether the skills attained enable the participant to perform work that is at a higher level than the participant’s current position; and
3. Whether it offers certification or other industry-recognized credential, increasing the worker’s overall employability.

Additional consideration should be given to basic skills remediation needed to prepare the worker to undertake IWT.

E. Incumbent Worker Training Partnerships

Regions are encouraged to develop collaborative partnerships with a range of organizations and intermediaries that can help them identify and design the appropriate layoff aversion interventions, such as the Department of Commerce's Trade Adjustment Assistance for Firms or the Manufacturing Extension Partnership (MEP), Chambers of Commerce, Small Business Development Centers, community-based organizations, and others.

F. Sources of Funds for Incumbent Worker Training/Related Requirements and Procedures

1. WIA 10% Statewide Funds

WIA 10% statewide funds can be used at the local level for IWT without the need for a waiver and are **not** restricted to lay-off aversion activities. This is the case for the current SECTORS grants, which end during PY11 or PY12. As of Program Year 2011, new federal legislation mandates that states will not be receiving any additional WIA 10% funds.

However, if such funds become available in the future:

- A Region may submit a discretionary grant proposal for IWT per any grant solicitation that may be issued by CDLE or the Colorado Workforce Development Council. The proposal must identify the funding stream, describe the services to be delivered; define the performance outcomes; and set expenditure and performance goals as defined in the grant solicitation. CDLE or the CWDC will evaluate and approve the proposal in accordance with the established funding award criteria.
- The negotiated Common Measures standards for the WIA formula programs do **not** apply to use of these funds. The grant proposal must specify performance outcomes and how they will be measured.
- Recipients of statewide funds discretionary grants are required to adhere to local IWT policies and the guidance in **PGL #08-06-WIA: WIA and WP Discretionary Grant Quarterly Reporting.**

2. Set Aside of Local Formula Funds

In 2010, USDOL restricted local formula fund set-aside waivers to allow the implementation of IWT for purposes of layoff aversion only. If a region wishes to set aside formula funds for this purpose, the following rules apply:

- Up to 20% of the local Dislocated Worker allocation for the current program year (and/or an equivalent amount of prior year funding) may be set aside for IWT (See **Attachment 4** that contains instructions for determining the set-aside.)
- Youth and Adult funding set-asides are not allowed. Therefore, DW set-aside funds cannot be transferred to the Adult program.
- All IWT delivered under this waiver is restricted to skill attainment activities.
- Eligibility documentation includes the standard documentation for age, citizenship or eligible to work in this country, Selective Service, Affidavit of Immigration, and employer attestation that the worker is in danger of layoff.
- Incumbent workers do not have to meet the requirements for sequential delivery of intensive and training services that applies to adults and dislocated workers
- The Region must submit a set-aside grant proposal to its CDLE Program Monitor, utilizing the Expenditure Authorization Modification form. Refer to PGL 11-03-P *Expenditure Authorization (EA) Procedures* for instructions. The Proposal must describe the services and activities to be delivered, define the performance outcomes, and set expenditure and performance goals.

- CDLE will evaluate and approve the proposal in conjunction with a review of current performance and expenditure levels.
- **The Dislocated Worker negotiated Common Measures standards apply to any funds set aside under the local formula fund set-aside waiver.**
- Regions approved for a local set-aside IWT initiative are required to adhere to the reporting requirements set in **PGL 08-06-WIA: WIA and WP Discretionary Grant Quarterly Reporting.**
- CDLE will monitor the set-aside for compliance with the requirements of the waiver, as well as the deliverables and outcomes approved in the Expenditure Authorization. Workers served with the local DW set-aside funds must be newly enrolled in Connecting Colorado, using the **DW** program code and the **DS** (Dislocated Worker Set-Aside program subcode, on or after the start date of the period of performance for the set-aside (applies to DW, Enhanced DW, or Adult funds transferred to DW and set aside for IWT). The program **start date** is the date the first program-funded participation service is provided to the worker. Refer to **Attachment 7** for instructions.
- **Procedure for Exiting IWT Participants in Connecting Colorado from a local DW Formula Set-aside Grant**
An IWT participant in a set-aside is subject to the exit rules that apply to all formula grants, i.e. exit should occur on the **end date** of the last program-funded participation service provided to the participant. This exit date could be extended past the period of performance for the set-aside grant as a result of any subsequent participation services that are initiated through programs in which the participant is co-enrolled. Once 90 days have passed since the last participation service in any co enrolled program, record the program exit using the Store Termination Screen in Connecting Colorado (as illustrated in **Attachment 7**).

3. **WIA Dislocated Worker 25% Rapid Response Funds**

- Use of up to 20 percent of DW 25% Rapid Response funds for IWT is permitted under the State's waiver, but only for the purpose of implementing a layoff aversion strategy. Regions receiving these funds must provide assurances that the IWT will be utilized to prevent layoffs, based on their local IWT policies and procedures. (DW 25% Rapid Response funds can also be used for Dislocated Workers, as occurs with the Enhanced DW funds the regions have received each year and the funds distributed in PY11 for UI claimants and long-term unemployed individuals.)
- **All IWT delivered under the DW 25% Rapid Response waiver is restricted to skill attainment activities.**
- Incumbent workers served under the waiver do **not** have to meet the sequential delivery of intensive and training services that applies to adults and dislocated workers.
- Under the waiver, a region must submit a proposal or statement of work to its CDLE Program Monitor, utilizing the Expenditure Authorization modification format. (Refer to most recent PGL regarding **Expenditure Authorization (EA) Procedures for instructions.**) The Proposal or statement of work must describe the services and activities to be delivered, define the performance outcomes, and set performance goals and expenditure projections.
- CDLE will evaluate and approve the proposal in conjunction with a review of current performance and expenditure levels.

- **The negotiated Dislocated Worker Common Measures standards apply to any DW 25% Rapid Response funds that are distributed by formula; the negotiated DW Common Measures standards do not apply to any DW 25% Rapid Response funds that are distributed as discretionary, or distributed to implement the DW 25% Rapid Response waiver.**
- Regions receiving these fund by formula, must record the **DW** program code in Connecting Colorado plus any program subcode assigned by the state for the initiative.
- Regions receiving these funds as discretionary must record the **DX** program code in Connecting Colorado plus any program subcode assigned by the state for the initiative
- Regions using DW Rapid Response funds that are distributed as discretionary are required to adhere to the reporting requirements set forth in **PGL 08-06-WIA: WIA and WP Discretionary Grant Quarterly Reporting.**
- CDLE will monitor for compliance with the requirements of the waiver, as well as the deliverables and outcomes approved in the Expenditure Authorization.

4. Employment Support Funds (ESF)

ESF may be used by a Region to support the allowable activities of any of the programs that are funded under the Region’s grant agreement with CDLE. A Region that intends to utilize ESF in support of IWT activities must:

- Submit an Expenditure Authorization Modification that includes a description of the services to be provided, performance goals, and expenditure projections. (Refer to the most recent PGL on Expenditure Authorization (EA) Procedures for instructions.)
- Adhere to local IWT policies and procedures when utilizing ESF for incumbent worker training initiatives.
- Establish a local program code to identify participants enrolled in ESF incumbent worker training initiatives.
- The negotiated Common Measures standards **do not** apply to use of ESF for IWT.
- ESF funds do **not** require that IWT be part of a layoff aversion strategy.

5. SECTORS Grants (through 06/30/2013)

WIA 10% statewide discretionary funds can be used for activities such as exemplary programs, research and demonstration efforts, and special projects to assist local areas in carrying out local employment and training activities. CDLE and the CWDC have identified industry sector-based, cross-regional strategies as a priority to provide solutions to business needs for a skilled workforce. When SECTORS funding opportunities become available:

- A Region may submit a SECTORS grant proposal including IWT that
 - identifies the funding stream amount;
 - describes the services and activities to be delivered;
 - defines the performance outcomes;
 - sets performance goals and expenditure projections
- CDLE and the CWDC will evaluate and approve the proposal in accordance with established Solicitation for Grant Applications (SGA) funding award criteria.

- The Common Measures do not apply to use of these funds and IWT does **not** have to be part of a layoff aversion strategy.
- Recipients of SECTORS funds discretionary grants must adhere to local IWT policies and the guidance in **PGL #08-06-WIA: WIA and WP Discretionary Grant Quarterly Reporting**.

6. State Energy Sector Partnership (SESP) grant (through 01/28/2013)

SESP funds are allocated by CDLE to sub-grantees that in turn allocate to each workforce region. The workforce regions determine the amounts assigned to implementation of IWT programs. Use of SESP allocations to fund IWT is **not** limited to layoff aversion. Regions that serve incumbent workers using SESP grant funds must adhere to local IWT policies, and the guidance in **PGL 10-09-WIA Energy Sector Partnership & Training Grant Program Guidelines Procedures**. For additional instructions, consult the SESP Energy Scholarships Instruction Manual.

- An IWT program must be designed for the trainee to attain specified job-ready skills and must result in award of one or more industry-recognized credentials.
- Skills attainment activities may include basic skills remediation
- The decision to fund IWT is based upon the individual application submitted by the Participant.
- Regions must record the EG program code in Connecting Colorado for participants served with SESP grant funds.
- Common Measures are reported for SESP exiters.
- Quarterly “real time” measures are reported through the Recovery Act Data (RAD) system for SESP IWT participants.
- Program expenditures are reported by the sub-grantees.

7. H-1B Technical Skills Training Grant (through 09/30/2015)

The H-1B Technical Skills Training Grant Program is intended to raise the technical skill levels of workers so they can obtain or upgrade employment in high-growth industries and occupations. A region that intends to serve incumbent workers utilizing H-1B grant funds must submit an Expenditure Authorization (EA) that includes a description of the services to be provided, performance goals, and expenditure projections. (Refer to state guidance regarding **Expenditure Authorizations (EA)** procedures for H1B grants. A customized EA will be used for this grant.)

- Use of H-1B training funds to serve incumbent workers is **not** limited to layoff aversion.
- Training services to incumbent workers will be primarily short-term certificate programs, and in limited instances, degree completion coursework.
- Training objectives may be limited to targeted high-growth industries & occupations.
- Refer to the H-1B PGL and operations manual for guidance and instructions on eligibility, allowable activities, performance measures and reporting requirements, which differ from those of WIA.

G. Resources for Implementing Incumbent Worker Initiatives

A region that plans to provide incumbent worker training services must develop written agreements to be executed by the region, employers, training providers, and applicants. The agreements should include:

1. Notice of required applicant eligibility and application documents (worker)

2. Program application (worker)
3. Equal opportunity notice (worker)
4. Affidavit of Immigration (worker)
5. Attestation that I-9 documents are on file (employer). This avoids the need to collect a copy of the worker's SSN or other documents to demonstrate citizenship or eligible to work in the US.
6. Attestation to the employee's incumbent worker status (employer)
7. Training agreement (training provider, worker)
8. Report of outcomes, both expected and realized (worker, employer)

Attachment 6 is an example of a document packet created to provide incumbent worker information to employers, workers and potential training providers, and collect information from them. This packet contains a sample employer I-9 attestation form per #5 above.

H. Reporting IWT completers for entered employment (applies to all sources of funding except the H-1B grant)

USDOL's definition of Entered Employment includes "individuals who are employed when they begin training **and** enter a new position of employment after program completion, even if the new position is with the same employer, as long as the individuals utilize the competency or competencies they acquired through grant-funded education/job training in their new position."

1. For purposes of this guidance, a "new position of employment" means one or more of the following occurred subsequent to, and as the result of IWT completion:
 - The employee's wage or pay grade changed
 - The employee's job title changed and the employee's job function or duties changed
 - The employee's employment status changed (*e.g.*: from probationary)
 - The employee was assigned to another facility operated by the employer.
 - The employee accepted an offer from another employer.
 - The employee became self-employed
2. Case Managers are advised to use the preceding as a guide to determining whether a documented change in an IWT participant's status with the employer has occurred. Documentation may include:
 - The employee's pay record
 - Written notice of personnel action
 - Employer Attestation
 - Other appropriate documentation (*e.g.*: *bona fide* job offer) Case Managers must retain physical or electronic documentation, and record appropriate services, activities and case notes in Connecting Colorado

I. Quarterly Reports

Regions implementing WIA or other **discretionary** IWT grants are required to submit a Project Quarterly Status Report for each grant, commencing with the first quarter of the grant and concluding with a closeout status report due within 60 days following expiration of grant funds. The Region must submit one original signed report to its CDLE Program Monitor and appropriate Grant Manager. Utilize the quarterly report format in **Attachment 5**.

Due dates for quarterly project status reports are for quarters ending:

1. **July - September 30 due: October 31**
2. **October 1 – December 31 due: January 31**
3. **January 1 – March 31 due: April 30**
4. **April 1 – June 30/due: July 31**

V. IMPLEMENTATION DATE

Immediately upon release of this PGL.

VI. INQUIRIES

Please direct all inquiries to your Regional Liaison at Workforce Development Programs.

Elise Lowe-Vaughn, Director
Workforce Programs, Policy, and Strategic Initiatives

ATTACHMENTS

- Attachment 1: TEGL 26-09 Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010
- Attachment 2: TEGL 30-09 Layoff Aversion Definition and the Appropriate use of WIA Funds for Incumbent Worker Training Using a Waiver
- Attachment 3: Comparison: Training of Incumbent Workers vs. Employed Workers
- Attachment 4: Instructions for Determining the Set-Aside of Local Formula Funds
- Attachment 5: WIA and WP Discretionary Grants and set-aside Projects Quarterly Project Status Report
- Attachment 6: Boulder County WFC IWT Package
- Attachment 7: Instructions for Enrolling and Exiting IWT Participants in local DW formula set- asides