



## WIOA Incumbent Worker Training Policy

### Background and Purpose

Under the Workforce Innovation and Opportunity Act (WIOA), incumbent worker training, considered work-based training, is a permissible activity at both local and state levels. Local boards, in support of an employer or group of employers, are permitted to assist incumbent workers in obtaining the skills necessary to retain employment and/or avert layoffs, increase participant or a company's competitiveness, and be conducted with a commitment from an employer to retain or avert the layoffs of the incumbent workers trained. This policy articulates how the Gloucester County Workforce Development Board (GCWDB) will administer the WIOA Title I formula-funded incumbent worker training program. Incumbent worker training opportunities that are funded through a temporary grant or any other federal/state dollars, certain requirements and provisions may vary. Funding the activity is at the discretion of the Gloucester County Workforce Development Board.

### References:

- Workforce Innovation and Opportunity Act (WIOA), Public law 113-128, enacted July 22, 2014
- Workforce Innovation and Opportunity Act Regulations, under 134(d)(4) and 20 CFR Parts 680,683
- Training and Employment Guidance Letter WIOA 19-16

### Adopted:

**April 17, 2019**

**Amended: 1-29-2021**

### Incumbent Worker Eligibility

Incumbent worker training is intended for workers with an established work history with the current employer, and who have the knowledge, skills, and abilities needed by their current employer but because of changes in the necessary skills to remain in their position, to advance in the company, or to avoid a layoff, the employees now need additional training. To qualify as an incumbent worker, the individual must be:

- US Citizen or Resident, or otherwise authorized to work in the US
- Age 18 years or older with males born on or before January 1, 1960, registered with Selective Service unless failure to register is determined unknowing (see GCWDB Selective Service Policy:2017-05-03:02)
- Employed, by a private entity; exception: Non-profit health care facilities
- Employed, per the Fair Labor Standards Act requirements for an employer-employee relationship, and
- Have an established employment history with the employer for six months or more.

If the incumbent worker training is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for six months or more as long as a majority of those employees who are being trained meet the employment history requirement.

An incumbent worker does not have to meet the eligibility criteria for WIOA Title I Adult and Dislocated Worker programs to qualify for incumbent worker training. If, however, the worker receives other services in addition to incumbent worker training, the individual must meet applicable eligibility requirements. Because incumbent worker training is intended to evaluate the employers for eligibility, individuals who receive only incumbent worker training do not qualify as a participant and are not included in calculations for primary indicators of performance. Employers will be required to submit and GCWDB will maintain data and information on individuals who receive incumbent worker training, including employment status after training, wages after training, credential attainment, and measurable skill gain. GCWDB may also collect additional employer data such as employer size, industry, and other information to evaluate the effectiveness of incumbent worker programs.

### **Employer Eligibility**

Incumbent worker training must lead to an in-demand occupation as determined at the local level.

The GCWDB will not fund training that is necessary for employers to meet federal “safe workplace” requirements (e.g., OSHA, ServSafe, etc.).

When determining the eligibility of employers to receive WIOA incumbent worker funds, GCWDB will consider the following factors as incumbent worker training that is offered to support workers to obtain the skills necessary to:

- retain employment and/or avert layoffs,
- increase participant or a company’s competitiveness,
- Conducted with a commitment from an employer to retain or avert the layoffs of the incumbent workers trained,
- The characteristics of the incumbent workers to be trained (i.e., the extent to which these individuals represent populations with barriers to employment and how these individuals would benefit from a skills gain that results in retention or advancement):
  - The quality of the training is evidenced by the extent to which it provides advancement opportunities, industry-recognized credentials, etc.
  - The number of participants the employer plans to train or retrain
  - The wage and benefit levels of participants both before and as a result of training
  - The occupations 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 the Employer’s industry status; is the employer in:
    - An in-demand industry and determined by NJLWD labor market information; or
    - A stable industry as determined by NJLWD labor market information; or
    - A declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investments in incumbent worker training
- Recent lay-offs and relocations. The employer must not have laid off any workers within 120 days to relocate to Gloucester County from another state and
- Employer’s unemployment insurance and workers’ compensation status. The employer must be current in unemployment insurance and workers’ compensation taxes, penalties, and/or interest.

GCWDB will document all factors that were considered in approving an incumbent worker training project with an employer or group of employers by using the Employer Checklist (attached).

### Length of Incumbent Worker Training

Duration of enrollment in the Incumbent Worker Training will be consistent with the Occupational Information Network (ONET) specific Vocational Preparation Range (SVP), up to a maximum of twelve months:

SVP	Timeframe
Level 1	< 1 month
Level 2	1 month
Level 3	1-3 months
Level 4	3-6 months
Level 5	> 6 months; generally up to 12 months

### Funding Incumbent Worker Training

If funding allows, GCWDB will reserve up to 20 percent of our overall adult and dislocated worker funding allocation for the federal share of the cost of incumbent worker training. To balance the needs of funding for other WIOA employer and career seeker customers, especially those with barriers to employment, other sources of funding such as Rapid Response, which is also intended for layoff aversion and similar purposes, maybe our funds of “first use.” The maximum amount of incumbent worker training per trainee under this policy is **\$ 5000**. In limited circumstances, based on factors including employer size, trainee barriers, availability of funding, and other applicable factors, the Chairman and Executive Director may provide a waiver to provide additional support. The Executive Director will report the number of waivers provided and the factors that led to the issuance of a waiver on a semi-annual basis to the WDB Executive Committee.

### Non-Federal Share Contribution

Employers who receive funds for incumbent worker training are required to pay for the non-federal share of the cost of providing such training; this requirement cannot be waived. GCWDB has established the non-federal share of such costs taking into consideration factors such 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.

The non-Federal share can include the amount of the wages paid by the employer to a worker while the worker is attending a training program; the employer may provide the share in cash or in-kind. The non-Federal employer share is based on the size of the workforce 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; and
- At least 50 percent of the cost for employers with more than 100 employees

The non-federal share may vary significantly based on the funding source. Sector strategies have employer-determined levels of non-Federal share contributions and the non-federal share of Rapid Response funds are set by federal requirements, which may not include a match requirement.

The GCWDB with NJLWD will track and document employer cost-share contributions. Official payroll documenting the worker’s hours and wages must be utilized to determine the amount of the employer’s share of cost.

The employer size is determined by the number of employees currently employed at the local operation where the incumbent worker training placements will be made. This size is determined by defining each employer based on the Federal Employment Identification Number (FEIN) and the number of employees that the FEIN employs within the County of Gloucester. Employer size is determined by the number of employees at the time of the incumbent worker training contract including employers with seasonal or intermittent employee size fluctuations. Employers must provide documentation to exhibit employer size. When substantiating the employee count and site information, GCWDB may also consult with NJLWD. In most circumstances, GCWDB will contract with employers for incumbent worker training and will support employers as they identify and contract with training providers if the employer has not yet identified a provider.

### **Conflict of Interest**

GCWDB members and/or standing committee members will neither cast a vote on, nor participate in any decision-making capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or the member's immediate family. For example, a local board member who is also an employer who wants to use services on a fee-for-service basis would be prohibited from voting to approve the use of local area services, facilities, or equipment for employment and training activities to such board member's incumbent workers. Neither membership on the board nor its standing committees nor receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions. Recipients of federal awards must disclose in writing any potential conflict of interest. Sub-recipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

### **Regulatory Limitations and Prohibited Activities**

- WIOA Title I funds must **not** be spent on:
  - Construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings;
  - Sectarian activities;
  - Wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system; Public service employment, except to provide disaster relief employment, as specifically authorized in section 194(10) of WIOA;
  - Expenses prohibited under another Federal, State, or local law or regulation;
  - Sub-awards or contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities;
  - Contracts with persons falsely labeling products made in America;
  - Foreign travel;
- Funds provided to employers for incumbent worker training must not be used to directly or indirectly assist, promote, or deter union organizing.
- Funds must not be used or proposed to be used for the encouragement or inducement of a business or part of a business to relocate from a location in the United States if the relocation results in an employee losing his or her job at the original location.
- Funds must not be used or proposed to be used for any business or part of a business that has relocated from a location in the United States until the company has operated at the new location for 120 days if the relocation has resulted in an employee losing his or her job at the original location.
- A participant in an incumbent worker training will not be employed in or assigned to a job if:
  - Any other individual is layoff from the same or any substantially equivalent job;
  - 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 participant; or

- The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.
- A participant in a program or activity authorized under title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).
- Incumbent worker training is not intended to impair any existing contracts for services or collective bargaining agreements. When a program or activity authorized under Title I of WIOA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.