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**BUREAU OF EMPLOYMENT SERVICES  
 POLICY AND PROCEDURES**

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**To: Local Board Directors**

**From: Peter J. Paré Director  
 Bureau of Employment Services**

**CC: Service Provider Directors  
 BES Commerce Center Staff**

**SUBJECT: Guidance for Distinguishing between Employed and  
 Incumbent Worker Training (IWT)**

**PURPOSE:**

This guidance updates the requirements and restrictions for Employed Worker and Incumbent Worker training provided by local workforce boards using formula WIA Adult and Dislocated Worker funds.

**BACKGROUND:**

The Workforce Investment Act (WIA) establishes a framework to assist unemployed adults and dislocated workers attain employment that provides a self-sufficient wage. WIA recognizes that employed workers may also require help in order to obtain or retain jobs that lead to self-sufficiency. It allows the use of local formula funds to serve employed workers and encourages states to use their state-level funds to develop innovative incumbent worker programs. The Maine Department of Labor has received a waiver from the United States Department of Labor (USDOL) that allows local workforce boards to use local WIA funds to provide incumbent worker training normally allowable only with state-level funding.

## **GUIDANCE:**

WIA distinguishes between an employed worker and an incumbent worker in several ways.

### **Employed Worker:**

1. An “employed worker” is an individual currently working who has been determined to be in need of employment and services in order to obtain or retain employment that allows for self-sufficiency, in accordance with the locally established definition of that term. See WIA Section 134(d)(3)(A)(ii), 20 CFR 663.230, and preamble to the WIA regulations at Federal Register, Vol. 65, No. 156, 49294, pages 49322 – 49323.
2. An employed worker, who currently meets the LWIB’s definition of self-sufficiency but needs services in order to retain their self-sufficient employment also may be served if documentation is obtained from the employer that the employee will not be retained unless additional training or services are received.
3. Dislocated workers who have become re-employed in "income maintenance" jobs (a job with a lower rate of pay than the job of dislocation) may also be served as long as the wage earned does not exceed the local criteria for self-sufficiency for dislocated workers.
4. The LWIB definition of “self-sufficiency” may be different for adult employed workers and dislocated workers.
5. Local CareerCenters are required to complete a WIA application and verify that the worker meets program eligibility criteria. An employed worker must receive at least one core service and one intensive service before training is provided.
6. Employed workers must be given the same customer choice options as other WIA clients (except for eligible employed workers who are enrolled in customized training with their employers).
7. Training must be provided in compliance with the Eligible Training Provider and Individual Training Account (ITA) requirements unless it is customized training or On-the-Job Training.
8. WIA employed worker services primarily are provided for the benefit of the employed worker but it is recognized that these services may also benefit the employer.

### **Incumbent Worker:**

1. An “incumbent worker” is an employed worker who is served with state-level funds. See WIA Section 134(a)(3)(A)(iv).
2. An incumbent worker does not necessarily have to meet the eligibility criteria for employed adults or dislocated workers.
3. Obtaining or retaining employment that leads to self-sufficiency is not a prerequisite for incumbent worker training.

4. Incumbent worker training is developed with an employer or employer association to upgrade skills training of a particular group of workers or industry.
5. Under normal circumstances, local boards are not allowed to use local WIA funds to provide incumbent worker training (IWT).
6. Through current waivers obtained from the USDOL, MDOL can allow the LWIBs to use up to 10 percent of local Dislocated Worker funds and up to 10 percent of local Adult funds for incumbent worker training only as part of a layoff aversion strategy.
7. Use of Adult funds must be restricted to serving lower income adults under this waiver.
8. The training program and training provider are selected by the business. The training provider is not required to be on the Eligible Training Provider List (ETPL); and use of an Individual Training Account (ITA) is not required.
9. For locally-funded IWT, age, citizenship/right to work, and compliance with the Selective Service registration requirements still must be met and verified.

Approved Waiver related to Incumbent Worker Training offered by local boards (expires June 30, 2013)

LWIBs may use up to 10 percent of their Dislocated Worker formula funds for IWT. The IWT can only be done by local boards as part of a layoff aversion strategy and the training is limited to skill attainment activities.

Action required to use formula funds for Layoff Aversion IWT

Local boards intending to use local WIA formula funds through the waiver to provide incumbent worker training are responsible for implementing local policy that addresses all provisions found in USDOL Training and Employment Guidance Letters (TEGL) 26-09 and 30-09.

At a minimum, local policies related to this waiver should include the following:

1. Criteria for identifying employers, targeted industries and economic sectors in need of layoff aversion IWT.
2. Criteria to determine a layoff risk and when and whether IWT is an appropriate response (see TEGL 30-09 for examples).
3. A process for determining eligibility of incumbent workers served under the waiver. Note that when an LWIB provides IWT to a group of workers at a single employer, eligibility for training does not need to be documented at the individual level. Local policy may establish eligibility criteria for groups of workers. Group level determinations only apply to a single company.
4. A procedure that provides documented evidence that a layoff was avoided
5. Details on criteria to determine how the skills attained under the waiver will contribute either to the maintenance of employment or increase in employment security for workers

## Data collection requirements for local employed/incumbent worker activities

- A. A WIA application must be entered into OSOS for each employed or incumbent worker served with local WIA funds indicating the applicable WIA title funding source (Title A-Low income or Title E – Dislocated worker) All employed workers and incumbent workers served with local funds must follow the three-tiered service delivery system identified as core, to include assessment services, intensive, to include case management services and training services
- B. The LWIBs will be required to submit a separate Quarterly Local Workforce Investment Board Formula Incumbent Worker Program Report (Appendix 1) to the BES with the regular quarterly program performance report.

## QUESTIONS AND ANSWERS

1. **When should a certificate/credential earned by an employed/incumbent worker be recorded?**

**Answer:** A certificate/credential should be recorded for any participant who completes training and receives a certificate/credential. Certificates/credentials may be recorded through the 3rd quarter after exit.

2. **What constitutes a credential countable under Adult and Dislocated Worker Credential Rate?**

**Answer:** Credentials include, but are not limited to, a high school diploma including special diplomas, GED or other recognized equivalents, post-secondary degrees/certificates; recognized skill standards; and licensure or industry-recognized certificates. See TEGL 17-05 for the federal definition of certificate/credential.

In order to get credit for accepted credentials, LWIBs should ensure credential information is appropriately recorded in OSOS. Credentials can be recorded when activities are closed, when a WIA case closure is recorded, and when a follow-up is recorded. Note that clients served under the local incumbent worker training waiver are included in this outcome.

3. **Can training providers that do not appear on the Eligible Training Provider List (ETPL) be used to provide training to employed adult workers?**

**Answer:** Yes. Training providers that are not on the ETPL may provide customized training for incumbent workers under the current waiver.

4. **If a dislocated worker becomes re-employed in an "income maintenance" job, but was not earning what he had been in his previous job, can this person be helped through dislocated worker funds?**

**Answer:** Yes, as long as the dislocated worker's current wage does not exceed the local definition of "self-sufficiency for dislocated workers. Since the objective in serving dislocated workers is generally to help them come as close as possible to the income earned at the time of dislocation, defining self-sufficiency for employed dislocated

workers as a percentage of the wage that was earned at the time of dislocation (e.g., 80 percent or 90 percent) is advisable.

**5. Are individual applications required for employed workers served with local WIA funds or can the employer provide trainee information?**

**Answer:** For individuals served with local WIA adult and dislocated worker funds, a complete OSOS application must be completed and signed by the worker. Documentation of the required general and program-specific eligibility information must be secured from the worker and verified by the local WIA provider.

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