

Subject:	WIOA Title I Incumbent Worker Training
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Distribution:	Arapahoe/Douglas Works! Workforce Center Leadership and Employees

The Arapahoe/Douglas Workforce Board (ADWB) has designated Arapahoe/Douglas Works! (ADW!) as the provider of Career Services for WIOA Title I: Adult, Dislocated Worker and Young Adult programs, Title III: Wagner Peyser, and Temporary Assistance for Needy Families (TANF).

CITATIONS/REFERENCES

- Workforce Innovation and Opportunity Act (WIOA) of 2014, Pub. L. No. 113 and 128, Sections 128, 129, 133, and 134
- WIOA Department of Labor-Only Final Rule (81 FR 56072, Aug. 19, 2016), Subparts D and F
- TEGL 03-15: Guidance on Services Provided Through the WIOA Adult, Dislocated Worker, and Wagner-Peyser Programs
- PGL WIOA-2016-08: On-the-Job Training
- PGL WIOA-2014-02: Guidelines for Affidavit of Immigration Status
- PGL WIOA-2017-02: WIOA Title I Incumbent Worker Training

PURPOSE

To establish guidance, process and procedure in regards to providing Incumbent Worker Training (IWT) for WIOA Title I Adult and Dislocated Worker Programs.

BACKGROUND

WIOA was signed into law on July 22, 2014 and is designed to help job seekers access employment, education, training, and supportive services to succeed in the labor market; and to match employers with the skilled workers they need to compete in the global economy. WIOA supersedes Titles I and II of the Workforce Investment Act (WIA) of 1998, and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973.

Furthermore, WIOA provides for a workforce system that is universally accessible and customer centered, with an emphasis on work based learning and classroom training that is job driven. Among the many training options available to Adults and Dislocated Workers (but not Young Adults) is incumbent worker training, a learning strategy that allows local areas to serve individuals who are currently working. Under the Workforce Investment Act, IWT was generally associated with waivers. This is no longer the case under WIOA, which has incorporated IWT into the law and allows IWT with formula funds at the local level, in addition to state level discretionary funding sources that can be used at either the state or local levels.

POLICY/ACTION

➤ WHAT IS INCUMBENT WORKER TRAINING?

Incumbent worker training is work based and/or classroom training provided to individuals currently working that increases the competitiveness of the employee and the employer (competitiveness is defined as an exhibiting stability and profitability).^{*} It is focused on the needs of local employers and is 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 the workers in obtaining the skills necessary to retain employment;
- Conducted with a commitment by the employer to avert the layoff of the incumbent worker(s) trained, or otherwise retain the worker(s); and
- May include apprenticeship training

As IWT is "conducted with a commitment by the employer to avert the layoff of the incumbent worker(s) trained, or otherwise retain the worker(s)," it should be documented that the training provided to the employer's cohort will avert the layoff (as a result of the business being more competitive).

The training program for incumbent workers shall be carried out by the local area by contract in conjunction with the employers or groups of employers of such workers, which may include partnerships with other entities for purposes of delivering the training. The development of IWT contracts is, in general, the responsibility of the Business Services Team in each local area, but may be assigned to other staff as appropriate.

In addition, USDOL suggests that a "model" incumbent worker training program would be one where a participant acquires new skills allowing him or her to move to a higher skilled and higher paid job within the company, thus permitting the company to hire a job seeker to backfill the incumbent worker's pre-training position. This model is encouraged, but is not a statutory requirement.

➤ WHO QUALIFIES AS AN INCUMBENT WORKER?

Incumbent worker training is focused on employers and their eligibility for incumbent worker training services. However, to receive the incumbent worker training, an individual being considered for incumbent worker training must qualify as an incumbent worker by meeting the following requirements:

- Must be employed, meeting the Fair Labor Standards Act requirements for an employer-employee relationship;
- Have an established employment history with the employer for 6 months or more, with the following exception: in the event that the incumbent worker training is being provided to a cohort of employees, not every employee in the cohort must meet the 6 month requirement. However, at least 51% of the workers must meet this requirement; and
- Meet additional qualifications that may be set by the local board

➤ MUST INCUMBENT WORKERS MEET PRIORITY OF SERVICE OR PROGRAM AND TRAINING ELIGIBILITY FOR THE ADULT OR DISLOCATED WORKER PROGRAMS?

- If incumbent workers only receive the IW incumbent worker training service, they do not have to meet the priority of service requirements for the Adult Program, the program eligibility requirements for the Adult or Dislocated Worker Program, or the training eligibility requirements for either the Adult or Dislocated Worker Programs.
- If a local area intends to provide any career services, supportive services, and/or other training services with WIOA Title I funding or funded staff, besides incumbent worker training, then the incumbent worker must meet Adult priority of service, Adult or Dislocated Worker eligibility, and eligibility for training.
- In either instance, an incumbent worker must meet the State of Colorado Lawful Presence requirements as applied to all WIOA customers (see PGL WIOA-2014- 02: Guidelines for Affidavit of Immigration Status).

NOTE: Individuals receiving IWT and no other services will not be enrolled in the AD or DW programs, and will not be considered participants or included in the primary indicators of performance for the WIOA Adult or DW programs. However, all individuals, whether or not enrolled in AD or DW, must meet the qualifications in section above to receive incumbent worker training.

➤ **WHAT FUNDING CAN BE USED TO PAY FOR INCUMBENT WORKER TRAINING?**

The local area may reserve up to 20% of their local Adult formula funds and/or up to 20% of their local area Dislocated Worker formula funds for incumbent worker training. The 20% applies to the total allocation each year (the total of program and administrative funds). This reservation of funds must be approved by the local board and may occur at any time during the program year, but cannot exceed 20% of each year's total allocation.

Should the local board approve use of local formula funds for IWT, the local area must reflect this decision in an Expenditure Authorization submitted to their Regional Liaison, which includes separate Quarterly Participation, Performance, and Expenditure charts for the IWT initiative. Local areas will also be expected to provide documentation of the board decision in the form of local board minutes or inclusion of the decision in the local or regional plans submitted to the Colorado Department of Labor and Employment (CDLE) and the Colorado Workforce Development Council.

NOTE: The state may also identify state level discretionary funds for local areas to use for incumbent worker training. However, the rules for use of these funds will be covered in a separate PGL, should the state designate funds for this purpose.

➤ **WHAT IS THE DIFFERENCE BETWEEN AN INCUMBENT WORKER AND AN EMPLOYED WORKER AND THE SERVICES FOR THESE TWO GROUPS?**

WIOA has intentionally created separate definitions for an Incumbent Worker and an Employed Worker.

Please see chart on following page.

Incumbent Worker	Employed Worker
<ul style="list-style-type: none"> ➤ An incumbent worker training program is focused on the needs and eligibility of the employer. It can be a program separate from the AD or DW program or a part of these programs. 	<ul style="list-style-type: none"> ➤ Employed worker services are focused on the needs of the worker and are always part of the AD and/or DW programs.
<ul style="list-style-type: none"> ➤ Local areas must obtain board approval for use of local Adult and/or DW formula funds for IWT and this may not exceed 20% of the total allocation for either program for each year of funding. 	<ul style="list-style-type: none"> ➤ There is no limit to the amount or percentage of local formula funds that may be used to serve participants who are employed workers at program enrollment.
<ul style="list-style-type: none"> ➤ Employers who participate in IWT contracts and receive IWT reimbursements must meet employer eligibility and cost sharing requirements set by the local board and commit to retaining the employees receiving IWT. 	<ul style="list-style-type: none"> ➤ Employers do not have to meet an eligibility requirement in the case of employed worker services unless these services include an OJT, Customized Training, or other training contract under local training policies.
<ul style="list-style-type: none"> ➤ To qualify as an incumbent worker, the employee must be in an employer/ employee relationship with the current employer for a period of no less than 6 months prior to initiation of services; in a cohort of workers, at least 51% must meet the 6-month requirement. 	<ul style="list-style-type: none"> ➤ To qualify as an employed worker, the individual must be employed or underemployed and not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment. The local board must establish a self-sufficiency standard in local policy.
<ul style="list-style-type: none"> ➤ An incumbent worker doesn't have to meet priority of service for the Adult program, or program or training eligibility for either the Adult or Dislocated Worker programs, if he receives the IW service only and no other career, supportive, or training services provided with WIOA Title I funding. 	<ul style="list-style-type: none"> ➤ An employed worker must meet priority of service, and must meet program eligibility, and training eligibility (if receiving training services) for the Adult program; must meet program eligibility (in danger of layoff), and training eligibility (if receiving training services), for the DW program.
<ul style="list-style-type: none"> ➤ An incumbent worker receiving only IWT and no other career, supportive, or training service provided with WIOA Title I funding will NOT become a participant or be counted for the AD or DW primary indicators of performance. Such individuals are to be enrolled in the IW program code only. Performance outcomes for this group will be reported separately to USDOL. 	<ul style="list-style-type: none"> ➤ An employed worker will be considered as a participant and counted in the Adult or DW primary indicators of performance. Such individuals must be enrolled in the AD and/or DW program codes, and will be reported to USDOL as a program participant for performance outcomes.

NOTE: Local areas and their boards may choose either or both strategies to address the employment needs of businesses and workers in their local labor markets.

DETERMINATION OF EMPLOYER ELIGIBILITY

For the purpose of determining the eligibility of an employer to participate in an IWT contract and receive IWT reimbursements, the local board shall take into account the following factors:

- The characteristics of the potential employed participants;
- The relationship of the training to the competitiveness of a participant and the employer; and
- Other such factors as the local board may determine to be appropriate such as the
 - The number of employees participating in training;
 - The wage and benefit levels of those employees (current and anticipated upon completion of the training); or
 - Existence of other training and advancement opportunities provided by the employer.

DETERMINATION OF NON-FEDERAL (EMPLOYER) SHARE OF IWT COSTS

The local board shall determine the employer share of the IWT costs, taking into consideration such factors as:

- The number of employees participating in 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 the employees; and
- The availability of other employer-provided training and advancement opportunities.
- The calculation of the employer share may include the amount of wages paid by the employer to the workers attending the IWT program. The employer may provide the share in cash, or in kind contributions that are fairly evaluated (per OMB Uniform Guidance at 2 CFR 200.306). But the percentage share shall not be less than:
 - 10% of the cost, for employers with not more than 50 employees;
 - 25% of the cost, for employers with more than 50 employees but not more than 100 employees;
 - and
 - 50% of the cost, for employers with more than 100 employees.

The size of the employer may be determined by the number of employees currently employed at the local operation where the incumbent worker training will occur.

NOTE: In-kind contributions may include the cost of staff time when an employee is participating in classroom training, the cost of running/maintaining equipment used in the training, the cost of classroom training not covered by the WIOA share, or other training related costs not covered by the WIOA share.

STATE MONITORING

IWTs will be subject to annual program monitoring by CDLE, which includes a sample review of IWT contracts and case files to ensure compliance with Federal, state and local policies. If incumbent workers are enrolled in AD or DW, all AD and/or DW documentation and programmatic requirements will also be monitored. Review of IWT fiscal transactions will be conducted by CDLE Fiscal Monitors.

PROCEDURES AND DOCUMENTATION

Employer Selection

ADW! must have sufficient documentation to demonstrate that participating employers were selected equitably and that a variety of employers were given sufficient opportunity to participate in IWTs. Documentation should demonstrate that a variety of employer outreach strategies were utilized to ensure that area employers are aware of IWT opportunities. Employer outreach strategies may include (but are not limited to) newsletters, websites, forums, outreach materials, and other meetings or communications targeted to area employers. If the majority of IWT funds benefit only one employer in a local area in a given program year, this will be closely

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examined by the state monitoring team, and sufficient documentation must be provided to demonstrate that there was no preferential treatment given to that employer.

Pre-Award Assessment Review

This pre-award review must include:

- a. Names under which the establishment does business, including predecessors and successors in interest;
- b. The Federal Employer Identification Number (FEIN);
- c. The name, title, and address of the company official certifying the information;
- d. Identifying that the targeted employee(s) have been in an employer/employee relationship for at least 6 months and meet any other qualifications set by local board policy;
- e. Determining the employer eligibility for IWT per "Determination of Employer Eligibility" section above;
- f. Identifying that the skills of the targeted employee(s) are no longer relevant to the employer's operational needs
- g. Determining how IWT will increase the competitiveness of the employer and targeted employees
- h. Determining that new skills can be obtained in a reasonable period of time at a reasonable cost
- i. Obtaining the employer commitment to retain all employees receiving IWT, provide the employer share of the costs, and provide required documentation
- j. Assessing any additional items required by the local IWT policy.

Note: As part of the Pre-Award Assessment, staff conducting the assessment are expected to fill out a pre-award assessment form (paper or electronic) that is signed by both the employer and the staff person. This form will be considered documentation of self-attestation by the employer.

Contractual Requirements

The contract with the employer must ensure that participants are provided a structured training opportunity to gain the skills and competencies necessary to be successful in the occupation in which they receive training.

The ideal IWT contract will include, but is not limited to:

- a. A training plan that includes the occupation, skills and competencies to be learned; plus an outline of the work-based and/or classroom training that will be provided;
- b. The length of training time provided;
- c. The wage rate for the employee;
- d. The percentage rate used for reimbursement to the employer and the maximum amount for reimbursement;
- e. The employer share of the costs and whether it will be cash or in-kind;
- f. That the reimbursement is strictly for regular hours worked, and does not include paid time off (e.g. sick leave, vacation, holidays, jury duty, etc.), overtime, or benefits;
- g. The employer's agreement to maintain and make available time and attendance, payroll and other required documentation to support amounts claimed by the employer for reimbursement and cooperate with state and local monitoring;
- h. Assurances that training will be in accordance with WIOA Section 181 (fair and equal wages, prohibition on displacement of current employees, equal benefits and working conditions, prohibition on use of funds after relocation, collective bargaining); and
- i. Assurances that training will be in accordance with the WIOA Final Rule,
- j. §680.780 – 680.820.

Payments to Employers and Tracking Employer Share of IWT Costs

Payment to employers must be managed by an invoice system that clearly documents the number of hours worked each day by the participant and rate of pay for the time period. Invoices must be signed by both the participant and the employer **or** only by the employer if accompanying documentation (timesheets/time cards) are signed by the participant and reconciled to the invoice. The reimbursement is for regular hours worked, and does not include paid time off (e.g. sick leave, vacation, holidays, jury duty, etc.), overtime, or benefits. It may include time in classroom training that is part of the IWT, and occurs during regular work hours.

Local areas must also set up a system for tracking the employer share of the IWT costs that includes a mechanism for employers to report their contributions, and regular reconciliation with the total IWT costs and employer share identified in the IWT contract.

Reporting Incumbent Worker Training Costs

- Once the local board decides to implement incumbent worker training, the local area will need to submit an Expenditure Authorization showing the start and end date of the IWT service, and the amount, year, and type of funds that are being set aside. This could occur in an original EA or EA modification, depending on when the IWT service is being initiated.
- Local areas will then be responsible for monthly reporting of incumbent worker training costs as a sub-category of Adult and/or Dislocated Worker costs.
- IWT costs can be administrative or program costs, just as any other AD or DW service or activity. There will not be separate CORE program codes for these expenditures.

Tracking Incumbent Workers in Connecting Colorado

- a) Incumbent workers receiving only the IW service and no other services must be registered in Connecting Colorado and enrolled in the new IW program code for formula funding. CDLE is working to develop a short registration form that will include only those data elements necessary for reporting of incumbent workers receiving the IW service only. This form will be accessible through the Connecting Colorado E-Stop System, once it has been programmed. In the interim, local areas may use other mini- apps currently available in E-Stop as long as the following items are collected and entered:
 - Social Security Number or masked number
 - Address, phone, email address
 - Occupational code of employment first quarter prior to participation
 - Industry code of employment first quarter prior to participation
- b) Incumbent Workers receiving career, supportive and/or additional training services that are provided with WIOA Title I funding must be registered in Connecting Colorado and enrolled in the AD and/or DW program codes in instead of the IW program code. Any additional services provided should be entered into their Connecting Colorado records.
- c) Incumbent worker training is tracked in Connecting Colorado by the entry of the IW service code. The start and end dates for this training service should match the start/end dates of the IWT contract unless the individual drops out before completion.
- d) Incumbent workers receiving only the IW service code are to be “hard exited” with the exit date being the last date of training. This hard exit should be entered at the same time the local area enters the completion date of the IW service.
- e) See the chart below for a side-by-side summary of these requirements:

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Incumbent Worker – IW Service Only	Incumbent Worker – Additional Career/Supportive/Training Services
<p>An incumbent who receives the IW service only and no other career, supportive, or training services provided with WIOA Title I funds, must only meet the WIOA + local definition of an incumbent worker and the requirements for the Affidavit of Immigration.</p>	<p>An incumbent worker receiving additional career/supportive/training services provided with WIOA Title I funds must meet priority of service for the Adult program, program and/or training eligibility for either the Adult or Dislocated Worker program, and the requirements for the Affidavit of Immigration.</p>
<p>An incumbent worker receiving only IW and no other career, supportive, or training service provided with WIOA Title I funds, will NOT become a participant or be counted for the AD or DW primary indicators of performance. Such individuals:</p> <ul style="list-style-type: none"> ➤ May be registered using a mini-app available through E-Stop ➤ Are to be enrolled in the IW program code only ➤ Must have the IW service code added to their record ➤ Will have performance outcomes reported separately to USDOL as part of the PIRL ➤ Are hard-exited on the end date of the IW training service. 	<p>An incumbent worker receiving services in addition to the IW service must be enrolled in the Adult or DW program, becomes a participant and is counted in the primary indicators of performance for the program. Such individuals:</p> <ul style="list-style-type: none"> ➤ Must be registered using the complete WIOA application. ➤ Are to be enrolled in the AD or DW program code ➤ Must have the IW service code added to their record ➤ Are counted in the AD or DW primary indicators of performance ➤ Follow the exit rules for all other AD or DW participants

INCUMBENT WORKER CASE FILES

Case files shall include documentation as follows:

- a. Connecting Colorado application
 - b. Qualification for IWT per local policy definition of an incumbent worker (this may be a copy of the signed Pre-Award Assessment)
 - c. Affidavit of Immigration;
 - d. Copy of the IWT contract including
 - o Percentage of reimbursement to employer;
 - o Amount of reimbursement, based on hours worked and wage rate;
 - o Type of training and length of the IWT, based on factors established in local policy; and
 - e. Notes documenting trainee's progress, including any employer progress reports.
- If enrolled in AD or DW, the standard case file documentation also applies.

LOCAL MONITORING OF IWT CONTRACTS

On-site monitoring of IWT employers is required by local areas to ensure validity and propriety of the reimbursement amounts claimed by employers and to verify that the training for which the contract is written is delivered. Local monitoring procedures must include, at a minimum:

- a. Roles of the employer, participant, and workforce center representative;
- b. Monitoring of IWT providers and worksites to ensure that all parties are in compliance with contract deliverables, cost, performance, and goals, including type and length of training
- c. Desk review of invoices and supporting documentation
- d. Employer outreach strategies and equitable selection;
- e. On-site monitoring of worksite conditions; and
- f. Validation of skill and competency attainment for participants.

LOCAL INCUMBENT WORKER TRAINING POLICIES AND PROCEDURES

Local boards are responsible for creating local IWT policies and procedures that use, at a minimum, the guidelines in sections A through I of CDLE's IWT PGL. ADW! may add requirements that are stricter than those of the state, but not less restrictive. The minimum state factors include:

1. Procedures for determining the percentage (up to the maximum of 20%) of local Adult and/or Dislocated Worker local formula funds to be used for IWT; and obtaining local board approval to use these funds for IWT
2. Qualifications for/definition of an incumbent worker
3. Definition of employer and employee competitiveness
4. Determining employer eligibility for IWT
5. Length of training; sliding scale for reimbursements, maximum reimbursement allowed, and procedures for approval of exceptions to the maximum reimbursement
6. Determining employer share of the IWT costs
7. Pre-award assessments/factors for selecting employers and awarding contracts
8. Contract requirements
9. Reimbursements and procedures for tracking employer share of costs
10. Incumbent worker tracking and documentation requirements
11. Local contract monitoring process
12. Demonstrating alignment with the WIOA local 4-year plan, particularly sector strategy approaches for in-demand occupations
13. Other requirements established by the local board, which may include establishing local performance outcomes for IWT initiatives

INCUMBENT WORKER TRAINING RESOURCES

Unfortunately, USDOL has not issued any formal guidance or established a community of practice for incumbent worker training initiatives under WIOA. Until resources become available, please review PGL WIOA-2016-08: On-the-Job Training and its attachments at www.colorado.gov/cdle/pgl for a sample pre-award checklist and contract. Although not all aspects of these documents apply to IWT, the general format and content may prove useful.

ADWB MEMBERS & ADW! EMPLOYEES

ADWB members as well as ADW! employees are not eligible for any ADW! OJT funding. In addition, relatives of ADWB members as well as ADW! employees are not eligible for any ADW! OJT funding.

Relatives are defined as:

- Parents, spouses, children, cousins, grandparents, siblings, nephews, nieces, aunts, uncles, in-laws; please note, this is inclusive of step-family.

All participants in this category will be referred to other outlining counties for program-attached services. Any ADWB board member relatives and/or ADW! employee relatives enrolled prior to July 1, 2008 will adhere to Local Policy #2008-21.

CONFLICTS OF INTEREST

Employees shall not have a personal interest in any actions in which they may be involved in selecting the vendor, executing a contract or purchase order, or negotiating or administering the contract or purchase order. Employees will not be allowed to solicit, obtain, accept, or retain any personal benefit (gift, favor, service, compensation, or discount) from any supplier, vendor, or any individual or organization doing or seeking business with the County. Employees having a potential personal interest in a County contract, purchase, payment, or other financial or monetary transaction shall give 72 hours written advance notice of the conflict to the County Attorney. Failure to disclose a conflict will not be tolerated. "Personal interest" includes an interest held by the individual or relatives. Relatives are defined as: parents, spouses, children, cousins, grandparents, siblings, nephews, nieces, aunts, uncles, in-laws; please note, this is inclusive of step-family).

Only the ADW! Talent Development Manager and/or ADW! Deputy Division Manager may grant exceptions to provisions within this policy.