

<b>EMPLOYMENT AND TRAINING ADMINISTRATION          ADVISORY SYSTEM          U.S. DEPARTMENT OF LABOR          Washington, D.C. 20210</b>	CLASSIFICATION
	CORRESPONDENCE SYMBOL
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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 18-05

TO: STATE WORKFORCE AGENCY ADMINISTRATORS  
 WORKFORCE INVESTMENT BOARD CHAIRS  
 STATE WIA LIAISONS  
 STATE DISLOCATED WORKER PROGRAM COORDINATORS  
 STATE RAPID RESPONSE COORDINATORS  
 STATE TRADE COORDINATORS  
 STATE BUSINESS RELATIONS GROUP COORDINATORS

FROM: EMILY STOVER DeROCCO   
 Assistant Secretary

SUBJECT: Using Workforce Investment Act Funds to Serve Incumbent  
 Workers and Employed Workers

- Purpose.** The Workforce Investment Act (WIA) statute and regulations provide guidance on the use of WIA funds for incumbent and employed worker training. The statute also provides waiver authority that can be useful for this purpose. The goal of this guidance is to identify where the flexibility exists under the statute and regulations for states and local areas to use WIA funds for incumbent worker training.
- References.** The WIA Pub.L. 105-220, 29 USC 2801 et. seq.(Aug. 7, 1998); 20 CFR parts 661-670; The Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, as amended.
- Background.** The workplace is rapidly changing as a result of technology and innovation. It is advantageous to both business and workers for employed workers to be provided with opportunities to upgrade their skills. In many cases, skills upgrading can prove to be an effective layoff aversion strategy. Businesses place such a high value on the trained worker that according to a recent survey conducted for the Department of Labor by The Urban Institute and Johns Hopkins University, the private sector invests between \$46 and \$54 billion a year in total occupational training-related spending, excluding the accompanying administrative costs associated with such training. To maintain a competitive workforce in a global

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economy by promoting economic growth and helping businesses solve workforce challenges, such as the need to continuously upgrade worker skills and high turnover, we are encouraging the workforce investment system to strategically consider employed worker/incumbent worker training as a potential solution. Business interests are served by the retention of good employees through skills upgrade training and workers gain access to enhanced career opportunities and pathways. This guidance discusses ways in which WIA funds can be used for strategies to serve incumbent and employed workers. NOTE: Except where we are distinguishing between programs and activities funded under local formula funds versus statewide reserve funds, we use the terms “employed worker” and “incumbent worker” interchangeably.

4. **Guidance.** There are three general methods for spending WIA funds on incumbent worker or employed worker training. This guidance addresses each separately.

**A. As a WIA statewide activity.**

1. Incumbent worker intensive and training services are authorized statewide activities under the WIA §134(a)(3)(A)(iv)(I) utilizing funds drawn from the state’s reserve of adult, youth, and dislocated worker funds. With regard to eligibility for incumbent worker projects funded as statewide activities, we have previously stated that “these individuals do not necessarily have to meet the eligibility criteria for dislocated workers contained at §101(9) of the Act nor do they have to meet the criteria for employed adults and dislocated workers under §134(d)(4)(a).” (Preamble to the Final Rules for the WIA, 65 Fed. Reg. 49294, 49326 (Aug.11, 2000). WIA provides that statewide reserve dollars may be used for “implementation of innovative incumbent worker training programs, which may include the establishment and implementation of an employer loan program to assist in skills upgrading.” The State Workforce Investment Board is empowered to define the term “incumbent worker” for these projects. The definition of incumbent worker may include any employed worker, including newly hired workers.
2. As provided at 20 CFR §665.320(d)(2), the state may also use a portion of its funds reserved for rapid response activities, “to assist in devising and overseeing strategies for incumbent worker training including employer loan programs for employee skill upgrading.” These funds, however, may not be used to directly fund the incumbent worker training. In other words, the funding may be used for planning and overseeing strategies for incumbent worker training, but other funds must be used to actually train the workers. Regarding eligibility, if the rapid response funds are used to plan for formula-funded training, then the provisions at WIA §134 (d)(4)(A) apply.

**B. Using WIA formula grant funds without a waiver.**

“Employed adults and dislocated workers may also receive training services through the One-Stop system when certain conditions are met. These individuals must meet the statutory definition of an eligible adult or dislocated worker to receive intensive services, and ultimately training; an employed individual must be determined by a One-Stop operator to be in need of such services to obtain or retain employment that leads to self-sufficiency [emphasis added].” (Preamble to the Final Rules for the WIA, 65 Fed. Reg. 49294, 49326, Aug. 11, 2000). As per 20 CFR §663.310, training services may be made available to employed and unemployed adults and dislocated workers who meet the following criteria:

- 1) Have met the eligibility requirements for intensive services (see below for more information on these requirements);
- 2) Have received at least one intensive service under §663.240;
- 3) After an interview, evaluation, or assessment, and case management, the worker has been determined to be unable to obtain or retain employment (leading to self-sufficiency in the case of the employed worker) through such services;
- 4) Have selected a program of training designed to lead to employment; and
- 5) Are unable to obtain grant assistance from other sources.

A key criterion is that the employed worker is in need of services to obtain, or retain, employment leading to self-sufficiency. The regulations at 20 CFR §663.230 provide: “State boards or local boards must set the criteria for determining whether employment leads to self-sufficiency. At a minimum, such criteria must provide that self-sufficiency means employment that pays at least the lower living standard income level, as defined in WIA §101(24). Self-sufficiency for a dislocated worker may be defined in relation to a percentage of the layoff wage. The special needs of individuals with disabilities or other barriers to employment should be taken into account when setting criteria to determine self-sufficiency.” ETA wants to ensure that under-employed individuals are provided with the opportunity to pursue a career path leading to independence and a high skilled occupation.

**C. Using WIA formula grant funds with a waiver.**

Waiver authority under WIA may provide an additional opportunity to offer incumbent worker training. States may request (in consultation with chief elected officials and on behalf of one or more local workforce areas) the Secretary of Labor to grant a waiver to authorize local areas to spend a portion of WIA Title I local formula funds on activities authorized as allowable for the up to 15% of WIA Title I allotments reserved for statewide activities. If granted this waiver, local formula funds may be

used for projects to provide intensive and training services to incumbent workers who do not have to meet the eligibility criteria for dislocated workers contained at WIA§101(9), or the criteria for employed adults and dislocated workers under WIA §134(d)(4)(a) as described above. Dislocated worker funds still can only service dislocated workers. Standards for submission and approval of waivers are described at 20 CFR §§661.400 to 661.420. Waivers which have all ready been approved for requesting states can be viewed at [www.doleta.gov](http://www.doleta.gov) by clicking “waivers” in the right hand column.

States may also obtain authority to provide this waiver directly to local areas if the state submits and receives approval of a Workforce Flexibility Plan under 20 CFR §661.430.

For states that want to increase support for incumbent worker training and seek flexibility in other areas, submission of a work-flex plan may be the most efficient option. Work-flex permits governors to waive any of the statutory or regulatory requirements under Title I of WIA applicable to local areas, except those described at 20 CFR 661.430(a)(1), any of the statutory or regulatory requirements applicable under Sections 8 through 10 of the Wagner-Peyser Act, except those listed at 20 CFR 661.430(a)(2), and any of the statutory or regulatory requirements under the Older Americans Act of 1965, except those described at 20 CFR 661.430(a)(3). In the work-flex plan, the state must identify provisions likely to be waived. Once a work-flex plan is approved, governors may provide waivers outlined in the plan, as well as other authorized waivers that were not anticipated or included in the plan, without further approval from the Secretary of Labor.

5. **Action Required.** States should assure wide distribution of this clarification within the workforce investment system, and may wish to consider a waiver request, as circumstances dictate, especially under Base Realignment and Closures (BRAC) 2005 which may include instances where individual notification of layoff (particularly in the case of secondarily affected businesses) might occur well after a general announcement of base closure or realignment. States should also be aware that Workforce<sup>3</sup> One ([www.workforce3one.org](http://www.workforce3one.org)) is a rich source for viewing incumbent workers strategies that use a variety of funding sources.
6. **Inquiries.** Questions may be addressed to Christine D. Kulick at [Kulick.christine@dol.gov](mailto:Kulick.christine@dol.gov) or your Regional Administrator.