



STATE OF TENNESSEE  
**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**  
DIVISION OF WORKFORCE DEVELOPMENT  
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**Workforce Investment Act Memorandum 12-51**

**Topic:** Process that will be used by the LWIAs who select to implement the waiver approved for Incumbent Worker Training (IWT) using local formula funding.

**Subject:** Waiver of the requirement that prohibits the use of formula funds for Incumbent Worker Training.

**Purpose:** To provide guidance and instructions to LWIAs who choose to provide incumbent worker training using up to 10% of local Adult funds and up to 10% of local Dislocated Worker funds only as a part of a lay-off aversion strategy as referenced in TEG's 26-09 & 30-09 as an Incumbent Worker Statewide activity as granted in the state waiver approved by ETA on June 18, 2009.

**Background:** WIA Section 134(d)(3)(A) prohibits the use of formula funds for incumbent worker training (See Attachment 1). The approval of the State Waiver Plan will reduce layoffs and closures by assisting companies in saving jobs and becoming more competitive through provision of needed training to current workers. Through its implementation, this waiver will further the state's workforce investment system and will align with the state's strategic plan goals by addressing the need for a more skilled workforce and assist in the retention of businesses.

**Instructions:** Listed below are instructions for LWIAs who choose to utilize the waiver which allows for providing Local Boards, at their discretion, to spend up to 10 percent of Adult and up to 10% of Dislocated Worker funds allocated under WIA Section 133(b) to carry out Statewide Incumbent Worker Training programs.

1. The Incumbent Worker Training (IWT) application process currently being used for Statewide Incumbent Worker will continue to be used and

establishes the State developed criteria. The existing IWT process focuses on lay-off aversion which is also required under this waiver.

2. All applications will be submitted to the State Office of Workforce Development for final approval.
3. Since this waiver permits local areas to use local funds for statewide activity for IWT, eligibility for companies applying for grant consideration will be the same as eligibility in the existing Statewide IWT grant process.
  - a) Local areas that chose to use the 10% Adult funds for Incumbent Worker training are restricted to serving lower-income adults under this waiver and are required to follow the statutory definition of lower-income as being 200% of the Lower Living Standard Income Levels (LLSIL) using the income table containing calculated poverty levels for a family of two as the average.
  - b) Local Areas utilizing up to 10% of their Dislocated Worker funds for IWT are not subject to the lower-income requirement.
4. Seek local Board approval of all Incumbent Worker activity covered under this waiver.
5. LWIAs will advise the state of local funds set aside by local boards for IWT.
6. Provide the State with the above documentation and include as an addendum to this year's plan.
7. Provide information in CMATS as directed by state staff.

**Contact:** Questions concerning this memorandum should be directed to Sterling van der Spuy, Director of Workforce Development, at (615) 532-5945 or [sterling.vanderspuy@tn.gov](mailto:sterling.vanderspuy@tn.gov) .

**Effective date:** Immediately

**Expiration Date:** June 30, 2012



Susan K. Cowden, Administrator  
Division of Workforce Development

Attachment 1            10% local allocation for IWT

**Incumbent Worker Training**  
(Using formula funds for otherwise WIA ineligible)

Waiver - allows for the use of formula funds to serve those that may not otherwise be WIA eligible. In support of this, below are some excerpts from *TEGL 26-09 Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010* and *TEGL 30-09 Layoff Aversion Definition and the Appropriate Use of Workforce Investment Act Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver*

**TEGL 26-09** clearly states “As such, ETA will approve waivers to allow local areas to use a certain portion of local Adult and Dislocated Worker funds to conduct IWT as part of a layoff aversion strategy, and also permit states to use Rapid Response funds for such activities.”

***Use of Local Funds for Incumbent Worker Training***

This waiver allows the use of a portion of local WIA funds to permit local areas to conduct allowable statewide activities as defined under WIA section 134(a)(3), specifically IWT. Under the waiver and depending on what the state requested and was approved to do, states may permit their local areas to use up to 20 percent of Dislocated Worker funds, or up to 10 percent of Adult funds, or up to 10 percent of Adult and 10 percent of Dislocated Worker funds to train incumbent workers as part of a documented layoff aversion strategy. Use of Adult WIA funds for this purpose must be restricted to serving low-income adults. All training delivered under this waiver is restricted to skill attainment activities. Local areas must continue to conduct the required local employment and training activities identified at WIA section 134(d), and states are required to report performance information for any individual served under this waiver in the Workforce Investment Act Standardized Record Data (WIASRD) submission and include these individuals in program performance outcomes.

***Eligibility***

Under 20 CFR 665.220, states may establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services for purposes of statewide activities. The regulations further define an incumbent worker as "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 at 20 CFR 663.220(b) and 663.310." Since this waiver permits local areas to use local funds for the statewide activity of IWT, the state should establish definitions and policies to determine eligibility of incumbent workers served under this waiver, or require that local areas establish their own eligibility definitions and policies prior to providing IWT.

**TEGL 30-09** discusses: *Layoff Aversion Definition and the Appropriate Use of Workforce Investment Act Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver*

**Identifying Layoff Risks**

On the other hand, providing publicly-funded training to incumbent workers (who are otherwise ineligible for WIA-funded services) when there is no foreseeable threat of layoffs in the future in

order to generally “increase the competitiveness” of the employer/business, would not constitute a “layoff aversion strategy.”

### **Using Incumbent Worker Training for Layoff Aversion**

The regulations further define an incumbent worker served with statewide funds as “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 at 20 CFR 663.220(b) and 663.310.” When provided with statewide funds, IWT is not limited to layoff aversion activities.

IWT with these waivers is limited to layoff aversion because serving unemployed workers must be the workforce system’s focus in the current challenging economy, and resources should not be diverted to other uses at the expense of those most in need. However, to the extent some dislocations can be averted, ETA believes that some flexibility with these funds is warranted.

The primary goal of limiting IWT to layoff aversion is to ensure that it is worthwhile to invest public WIA funds in order to serve an employed individual to prevent his or her layoff, rather than serving a worker who is already unemployed. Evidence that a layoff could be avoided justifies an appropriate use of the waived funds.

### **Layoff Scenarios and Identifying Appropriate Workforce System Involvement**

*Scenario 3: An employer has been determined to be at risk for layoff unless workers receive training on a new production technology.*

The workforce system could provide IWT using its WIA statewide discretionary funds or IWT using local formula or Rapid Response funds with an approved waiver, assuming the situation meets the state developed criteria (IWT Grant process) for the use of such funds. The workforce system could also leverage other funds in the community such as from employers, community colleges, and others.