

TEXAS WORKFORCE COMMISSION LETTER

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Date: January 10, 2007

Keyword: WIA

To: Local Workforce Development Board Executive Directors
Commission Executive Staff
Integrated Service Area Managers



From: Laurence M. Jones, Director, Workforce Development Division

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

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information and guidance on using Workforce Investment Act (WIA) funds to provide training services to incumbent and employed workers.

REFERENCE:

Workforce Investment Act §134
Workforce Investment Act: Final Rule, 20 C.F.R. §663.230, §663.310, §665.210, §665.320(d)(2), and §668.150
United States Department of Labor Training and Employment Guidance Letter No. 18-05, issued March 6, 2006, and entitled "Using Workforce Investment Act Funds to Serve Incumbent Workers and Employed Workers"
WD Letter 50-05, Change 1, issued April 18, 2006, and entitled "Workforce Investment Act: Local Activity Funds Waiver Update"
WD Letter 51-06, issued August 11, 2006, and entitled "Determining Minimum Self-Sufficiency Levels: Adjusted 2006 100% Lower Living Standard Income Level"

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and state laws, rules, policies, and required procedures with a "No Local Flexibility" rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a "No Local Flexibility" rating is indicated by "must" or "shall."

Failure to comply with the federal and state laws, rules, policies, and required procedures with a "No Local Flexibility" rating may result in corrective action, up to and including sanction and penalty.

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a “Local Flexibility” rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

BACKGROUND:

The WIA statute and regulations provide guidance on the use of WIA funds for incumbent and employed worker training services. Three WIA funding sources are available for expenditure on incumbent or employed worker training services:

- WIA Statewide Activity Funds
- WIA Local Activity Funds
- WIA Formula Funds

This WD Letter provides Boards with:

- definitions of incumbent worker, incumbent worker training, and employed worker; and
- instructions for providing incumbent and employed worker training using WIA funds.

PROCEDURES:

Boards must be aware that the U.S. Department of Labor makes a distinction between:

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- incumbent worker services as allowable activities for WIA Statewide and Local Activity Funds; and
- employed worker services as allowable activities for WIA Formula Funds.

Incumbent Workers

Boards must be aware of the following definitions and guidelines when using WIA funds to provide training services to incumbent workers.

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Definition of Incumbent Worker

An incumbent worker is an employed person who receives training services funded with *WIA Statewide Activity* or *Local Activity Funds*. Boards must be aware that:

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- incumbent workers who receive training paid for with WIA Statewide Activity Funds are not required to meet the WIA Adult or Dislocated Worker eligibility criteria; and
- only basic WIA registration applies [i.e., citizenship/alien status (authorization to work), selective service registration, and age requirements].

Definition of Incumbent Worker Training

Incumbent worker training is developed with a specific employer or group of employers to upgrade the skills of a particular workforce. Such training is an important strategy for meeting the local workforce development areas’ needs for qualified workers, and may take place in or out of the workplace and during or after work hours for employees of a specific employer or group of employers.

WIA Statewide Activity Funds

One of the allowable statewide activities contained in 20 C.F.R. §665.210 includes the implementation of innovative incumbent worker training programs. Boards must be aware that for WIA Statewide Activity Funds, the definition of incumbent worker may include any worker employed by the participating employer, including newly hired workers.

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WIA Local Activity Funds

Boards may use WIA Local Activity Funds for incumbent worker training in accordance with the WIA Local Activity Funds waiver. Under the waiver, Boards may use WIA Local Activity Funds to provide intensive and training services to incumbent workers who are not required to meet the WIA Adult or Dislocated Worker eligibility criteria.

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WD Letter 50-05, Change 1, issued April 18, 2006, and entitled “Workforce Investment Act: Local Activity Funds Waiver Update” provides detailed information about designating WIA Formula Funds as WIA Local Activity Funds.

Employed Workers

Boards must be aware of the following definitions and guidelines when using WIA funds to provide training services to employed workers.

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Definition of Employed Worker

Employed workers include employed adults and dislocated workers who receive training services funded with *WIA Formula Funds*. Boards must be aware that:

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- employed workers must need such training to obtain or retain employment that leads to self-sufficiency, as determined by the Board; and
- employed workers must meet the eligibility requirements for training services contained in 20 C.F.R. §663.310.

WIA Formula Funds

Boards must use WIA Formula Funds only for employed worker training (i.e., the individual needs such training to help him or her obtain or retain employment that leads to self-sufficiency).

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Additionally, Boards must:

- ensure that the individual meets eligibility requirements for intensive services;
- ensure that the individual is served through the WIA sequence of services;

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- set self-sufficiency criteria for:
 - unemployed persons at 100 percent or more of the Lower Living Standard Income Level guidelines; and
 - dislocated workers*;
- consider the special needs of individuals with disabilities or barriers when setting self-sufficiency levels; and
- provide underemployed individuals (as defined in 20 C.F.R. §668.150) the opportunity to pursue a career path leading to independence and a high-skill occupation.

***Note:** Boards may use a percentage of the layoff wage to set self-sufficiency criteria for dislocated workers with a layoff notice who are still working.

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Boards may use up to 25 percent of their WIA Dislocated Worker Formula Funds for rapid response activities.

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Boards must not use WIA Rapid Response funds to directly fund incumbent worker training.

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However, Boards may use WIA Rapid Response funds to plan and oversee incumbent worker training, as long as they use other funds to pay for the training.

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U.S. Department of Labor Training and Employment Guidance Letter No. 18-05 (<http://wdr.doleta.gov/directives/attach/TEGL18-05.pdf>) provides additional information and guidance regarding the use of WIA funds for incumbent and employed worker training.

ACTIONS REQUIRED:

Boards must ensure that appropriate staff is apprised of and complies with the requirements in this WD Letter.

INQUIRIES:

Direct inquiries regarding this WD Letter to the assigned contract manager for your local workforce development area.

Rescissions: None	Expiration: Continuing
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