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STATE INSTRUCTION NUMBER 17-03, Change 1

To: Local Workforce Area Signatory Officials
Local Workforce Development Board Chairs
Local Workforce Area Administrators

Subject: Incumbent Worker Training

Issuance Date: January 18, 2019

Effective Date: Immediately

Purpose: To further clarify previously issued guidance on the use of Workforce Innovation and Opportunity Act (WIOA) funds for Incumbent Worker Training (IWT) services.

Background: IWT provides both workers and employers with the opportunity to build and maintain a skilled workforce. Training is intended to assist with expansion, new technology, retooling, new services/product lines, and/or new organizational structuring, or to be used as a layoff aversion strategy. IWT is not permitted to be used to provide the occupational training a new hire needs. IWT may be provided using local funds, state reserve funds granted to local workforce areas, or state Rapid Response funds to assist an individual business in averting layoffs.

Policy: Regardless of the source of WIOA funds used for IWT, there are common requirements related to business eligibility, worker eligibility, and IWT reporting in the SC Works Online Services (SCWOS) system.

Business Eligibility

- Each business must have at least one full-time employee, in addition to the owner, and be current on all state tax obligations.
- Training entities/training providers are not eligible for IWT funding for the purpose of training their own staff.
- City, county and state governments are not eligible for IWT funding for the purpose of training their own staff.
- A group of employers may form a training consortium for the purposes of receiving IWT. Third parties or consortia may apply for IWT funding on behalf of a group of employers who are eligible recipients of IWT.

- A business receiving services through ReadySC may be eligible for IWT so long as the training funded is not a duplication of services.
- A business that has relocated resulting in the loss of jobs at the original location is not eligible for IWT funding. Such a business becomes eligible once operational in the new location for 120 days.

Worker Eligibility

- The incumbent worker must be employed by the business and meet the Fair Labor Standards Act requirements for an employer-employee relationship.
- The incumbent worker must have an established employment history with the employer for six months or more (which may include time spent as a temporary or contract worker performing work for the employer receiving IWT funds), with the following exception:
 - When IWT is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for six months or more as long as a majority of those employees being trained meet the employment history requirement.
- Local Workforce Development Boards (LWDBs) must develop a process for documenting the six-month work history requirement for IWT recipients with the employer. The contract/agreement between the LWDB and the employer must include this as a term of the contract/agreement.
- An incumbent worker does not have to meet the eligibility requirements for participation in the Adult or Dislocated Worker programs, unless also enrolled as a participant in the WIOA Adult or Dislocated Worker programs.

Performance Accountability and Reporting

In accordance with State Instruction 17-01, Change 1, Required Employer Registration in SCWOS, employers who receive IWT funding must be registered and approved in SCWOS prior to executing an IWT contract. All IWT activity must be reported in the SCWOS system. This includes both employer and trainee information. Noncompliance with this policy may be cause for corrective action, up to and including the recapturing of awarded IWT funds.

- Employer service codes must be entered in SCWOS within 15 days of executing the IWT agreement.
- Trainee or individual activity codes must be entered in SCWOS within 15 days of the activity start date and closed within 15 days of the last date of activity.

Individuals receiving only IWT are not considered participants for the purpose of inclusion in WIOA performance indicator calculations. However, the US Department of Labor (DOL) requires that all individuals receiving IWT be included in federal reporting. The required elements for IWT individuals are limited to demographic information and the elements needed to calculate IWT performance indicators, including employment, earnings, measurable skills gain, and credential attainment. Therefore, DOL encourages the collection of incumbent worker SSNs as

part of the training contract/agreement with the employer so that wage records will be available for these individuals. If no SSN is available, LWDBs may utilize supplemental wage information to verify the wages reported.

Use of Local Funds

LWDBs may use up to 20 percent of their combined total adult and dislocated worker allocated funds for the cost of providing IWT. IWT funding is required to be awarded on a competitive basis. LWDBs must have an established policy that is consistently applied when evaluating applications and awarding IWT funding to local businesses. In addition to the *Business Eligibility* criteria noted above, LWDBs must also take into account the following factors when determining eligibility for participation in IWT:

- The characteristics of the individuals who would receive training (e.g. individuals with barriers to employment);
- Whether the training improves the labor market competitiveness of the employees or both the employees and the employer; and
- Other factors the LWDB may consider appropriate, including:
 - the number of employees participating in the training,
 - wage and benefit levels of those employees (both pre- and post-training earnings),
 - the existence of other training and advancement opportunities provided by the employer,
 - credentials and skills gained as a result of the training,
 - layoffs averted as a result of the training,
 - utilization as part of a larger sector and/or career pathway strategy, or
 - employer size.

NOTE: Staff must maintain and store Equal Opportunity information in a manner that ensures confidentiality in accordance with 29 CFR §38.41 and State Instruction Number 16-11.

Employers participating in IWT are required to pay for a share of the cost of providing the training to incumbent workers. LWDBs must establish policies regarding the employer share.

- The employer share can be met through cash payments, fairly evaluated in-kind contributions, or both.
- The employer share must not come out of any other Federal funds.
- The employer share may include the wages the employer pays to the incumbent worker trainee while the worker is attending training.
- In establishing the employer share of the IWT cost, LWDBs must take into consideration such factors as:
 - the number of employees participating in training;
 - the wage and benefit levels of these employees (at the beginning and anticipated upon completion of the training);

- the relationship of the training to the competitiveness of the employer and employees; and
- the availability of other employer-provided training and advancement opportunities.
- The minimum amount of employer share in the IWT depends on the size of the employer and shall not be less than:
 - 10 percent of the cost, for a business location with not more than 50 employees;
 - 25 percent of the cost, for a business location with more than 50 employees but not more than 100 employees; and
 - 50 percent of the cost, for a business location with more than 100 employees.
- Employer shares must be reported on the Financial Status Report (FSR).
- IWT applications must be submitted, reviewed and approved by the Department of Employment and Workforce (DEW) in accordance with the WIOA IWT Program Guidelines and related documents located in SCWOS under Staff Online Resources. This information will be used to ensure locally-funded IWT requests adhere to the above criteria. Additionally, failure to comply with the business and LWDA reporting requirements as outlined in the Guidelines may result in corrective action, up to and including deobligation of funds.

Use of State Reserve Funds

IWT funding is required to be awarded on a competitive basis. LWDBs must have an established policy that is consistently applied when evaluating applications and awarding IWT funding to local businesses. In addition to the *Business Eligibility* criteria noted above, LWDBs must also take into account the following factors when determining eligibility for participation in IWT:

- The characteristics of the individuals who would receive training (e.g. individuals with barriers to employment);
- Whether the training improves the labor market competitiveness of the employees or both the employees and the employer; and
- Other factors the LWDB may consider appropriate, including:
 - the number of employees participating in the training,
 - wage and benefit levels of those employees (both pre- and post-training earnings),
 - the existence of other training and advancement opportunities provided by the employer,
 - credentials and skills gained as a result of the training,
 - layoffs averted as a result of the training,
 - utilization as part of a larger sector and/or career pathway strategy, or
 - employer size.

NOTE: Staff must maintain and store Equal Opportunity information in a manner that ensures confidentiality in accordance with 29 CFR §38.41 and State Instruction Number 16-11.

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 - the number of employees participating in training;
 - the wage and benefit levels of these employees (at the beginning and anticipated upon completion of the training);
 - the relationship of the training to the competitiveness of the employer and employees; and
 - the availability of other employer-provided training and advancement opportunities.
- The minimum amount of employer share in the IWT depends on the size of the employer and shall not be less than:
 - 10 percent of the cost, for a business location with not more than 50 employees;
 - 25 percent of the cost, for a business location with more than 50 employees but not more than 100 employees; and
 - 50 percent of the cost, for a business location with more than 100 employees.
- Employer shares must be reported on the Financial Status Report (FSR).
- IWT applications must be submitted, reviewed and approved by DEW in accordance with the WIOA IWT Program Guidelines and related documents located in SCWOS under Staff Online Resources. This information will be used to ensure state reserve-funded IWT requests adhere to the above criteria. Additionally, failure to comply with the business and LWDA reporting requirements as outlined in the Guidelines may result in corrective action, up to and including deobligation of funds.

Use of Rapid Response Funds

In addition to the *Business Eligibility* criteria noted above, state Rapid Response funds may only be used for IWT to assist an individual business in averting layoffs. A layoff is considered averted when:

- a worker's job is saved with an existing employer that is at risk of downsizing or closing; or
- a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no or a minimal period of unemployment.

The use of Rapid Response funds for IWT requires criteria to determine a layoff risk, and when and whether IWT is an appropriate response. Consideration must be given as to whether, absent the training, a good job will be lost or degraded, and whether with the training the job

will be retained or improved. The following employer and worker group assessment criteria must be used in making such determinations.

Employer Assessment

- The company remains open, but it is phasing out a function which will lead to layoffs unless the workers can be retrained to perform new functions.
- A worker's job has changing skill requirements as a result of external economic or market forces, significant changes in technology or operating processes, rapidly changing industry or occupational job requirements, or emergence of new products.
- The changing skill requirements are outside of normal skill growth and upkeep that would be provided by the employer.
- Training programs reasonably prepare workers to address skill gaps.
- The employer demonstrates a commitment to retain employees or otherwise provide a tangible benefit to employees who receive IWT.

Worker Group Assessment

- Unless provided with training, the potentially laid-off workers do not have marketable, in-demand skills.
- The new skills can be attained in a reasonable period of time.
- The workers have not received formal layoff notices. Such workers can be served with regular WIOA dislocated worker funds.
- There exists a strong possibility of jobs, either with the existing employer or a new employer, if the potentially laid-off workers attain new skills.

IWT provided with Rapid Response funds must adhere to the following requirements:

- A no-cost, competitiveness review of the business will be conducted by the South Carolina Manufacturing Extension Partnership (SCMEP) prior to the completion of an IWT application. *NOTE: A substantially similar review conducted of the business, by a third party, may be used in lieu of a review conducted by SCMEP.* Such review will:
 - reveal/confirm limiting factors holding the business back;
 - provide a snapshot of how the business is performing in comparison to other companies; and,
 - provide a roadmap to improve competitiveness, performance and the bottom line.**The results of the review must reveal that layoffs would be imminent without intervention. The roadmap for improvement must confirm a need for employee training and identify the specific training needs in order to utilize funds for IWT.**
- Training providers are to be chosen at the discretion of the employer.
- Training must be completed within 12 months.
- Employers are not required to pay for a share of the cost of providing the training to incumbent workers.

- Generally, eligible businesses and training consortia may receive up to \$50,000 in a Program Year for Layoff Aversion IWT; however, an application may be funded at an amount less than or greater than \$50,000 based on the Employer and Worker Group Assessment criteria listed above.
- IWT funds will be used only to address the training needs identified in the SCMEP or third party review.
- All IWT delivered is restricted to skill attainment activities.
 - The training must result in skills that directly benefit the workers receiving the training by making them more qualified in their field of employment and/or providing new skills for new product lines or processes.
 - The skills attained through training should contribute to the maintenance of employment or increase in employment security for workers.
- Training should:
 - help to qualify workers for a job with changing skill requirements or for higher paying jobs with their existing employer or other companies in the area;
 - enable trainees to perform work that is at a higher level than their current positions; and
 - offer certification or other industry-recognized credentials.
- IWT applications must be submitted, reviewed and approved by DEW in accordance with the Layoff Aversion IWT Program Guidelines and related documents located in SCWOS under Staff Online Resources. This information will be used to ensure Rapid Response-funded IWT requests adhere to the above criteria. Additionally, failure to comply with the business and LWDA reporting requirements as outlined in the Guidelines may result in corrective action, up to and including deobligation of funds.

Action: Ensure that all appropriate staff receive and understand this policy.

Inquiries: Questions may be directed to Policies and Procedures at Polnpro@dew.sc.gov.



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