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MEMORANDUM

DATE: May 31, 2011
TO: Regional Workforce Board Executive Directors
FROM: Lois A. Scott, Program Manager, One Stop and Program Support
SUBJECT: Layoff Aversion Incumbent Worker Training

This memorandum is being issued to address confusion about incumbent worker training (IWT) and to review federal guidance issued subsequent to [AWI Communiqué 10-01](#), dated January 5, 2010, which informed Regions of waiver approvals by the United States Department of Labor (USDOL) and summarized the waiver authority that allows Regional Workforce Boards (RWB) to use local Workforce Investment Act (WIA) formula funds for IWT.

To ensure compliance with the current waiver requirements, Regions that elected to use the Layoff Aversion Incumbent Worker Training waiver authority should review and ensure compliance with the provisions in the [referenced documents](#).

Current Waiver Authority (expires June 30, 2011):

- Regions can use 10 percent of local Adult formula funds and 10 percent of Dislocated Workers formula funds for incumbent worker training at the local level.
- Incumbent worker training under the waiver may only be done as part of a layoff aversion strategy and the training provided must be limited to skill attainment activities.
- The use of Adult funding for incumbent worker training is restricted to lower income individuals only.
- RWBs are required to continue to conduct required local employment and training activities specified at WIA Section 134(d) and must report performance outcomes for any individual served under this waiver in the WIASRD.

Federal Guidance:

On May 12, 2010, the USDOL issued [Training and Employment Guidance Letter \(TEGL\) 26-09](#) to explain its waiver policy and clarify conditions placed on certain waivers. It wrote extensively

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about the use of local formula funds for IWT. The TEGL outlines the use of such funds as follows:

- Areas implementing this waiver must use IWT to avert layoffs and should institute policies that describe how the potential for layoff aversion will be determined, such as:
 1. the likelihood of future layoffs without the training;
 2. the business circumstances surrounding the probable layoff and how the training will prevent the layoff or reduce the magnitude of a large layoff; and
 3. the specific skills to be provided to the workers that will help avert the layoff.
- Local areas must also establish criteria for determining the appropriate provision of IWT under the waiver, such as:
 1. eligibility for IWT participants when Adult funds are used by establishing a definition of low/lower income in relation to the self-sufficiency criteria referenced at 20 CFR 663.230;
 2. correct recording of IWT participation in the State management information system (Employ Florida Marketplace) for federal performance outcome reporting (reporting instructions can be found in the Waiver page 04);
 3. method for identifying employers, i.e. knowledge gained by contact with the RWBs or One-Stop Business Services representatives, Chambers of Commerce or Economic Development Councils, local media, or another indicator of a company that is at risk of layoff, particularly due to lack of a company's ability to compete because of its employee skill-base;
 4. consideration of how the skills attained contribute either to the maintenance of employment or increase in employment security for workers.

In addition to TEGL 26-09, the USDOL released [TEGL 30-09](#) on June 8, 2010. TEGL 30-09 defines layoff aversion, highlights the benefits of layoff aversion training and provides layoff aversion strategy for use in developing required local waiver plans. The TEGL mandates that plans provide criteria for determining a layoff risk and when and whether IWT is an appropriate response. Waiver plans should also consider whether a good job is likely to be lost or degraded, and whether the job is likely to be retained or improved with training.

Recording IWT into Employ Florida Marketplace (EFM):

- Activity codes to be used for coding locally-funded IWT under the waiver in EFM:
 1. 190 – Core
 2. 290 – Intensive
 3. 390 – Training

Continuing Waiver Authority:

As part of its 2011-2012 Plan submission, the State requested a continuation of current waivers, including the use of local Dislocated Worker formula funds for IWT. A consultation paper on the topic of WIA-funded training for employed workers and IWT will be issued after the USDOL responds to the waiver request. Until that time, Final Guidance AWI-060, revised May 27, 2008, is no longer in effect.

References:

1. [Communiqué 10-01 Waivers from USDOL](#)
2. [USDOL 2009-2010 Waivers](#)
3. [2010-2011 AWI Communiqué USDOL Waiver Approvals](#)
4. [TEGL 26-09](#)
5. [TEGL 30-09](#)