

**Commonwealth of Virginia
Virginia Community College System**

Policy Number:	02-04
Effective Date:	December 6, 2005
Revision #1:	October 17, 2008
Revision #2:	March 23, 2010 (Administrative updates to reflect waiver)
Rescission #3:	December 13, 2010 (Administrative updates to reflect further guidance by USDOL)
Title:	Incumbent Worker Training

PURPOSE

The purpose of this policy is to describe the use of Workforce Investment Act (WIA) statewide and local formula funding to create innovative incumbent worker programs and other related strategies that serve Virginia businesses.

REFERENCES

1. Code of Virginia, Section 2.2-2670
2. Public Law 105-220, Workforce Investment Act of 1998 (WIA), Section 134(a)
3. 20 CFR Part 652 et al., 665, 665.310 and 665.320
4. DOL ETA Waiver Regarding Use of Title I Formula Funds for Incumbent Worker Training granted Virginia on November 10, 2009 and Training and Employment Guidance Letter 30-09

POLICY STATEMENT

It is crucial for Virginia to promote a well-trained, well-educated, highly skilled and qualified workforce that understands and meets the needs of employers and that is actively engaged in lifelong learning. Virginia intends to ensure that workforce development services for the existing workforce are coordinated and that prospective strategies are developed for rapid access to the range of employer assistance through statewide and local initiatives. Virginia recognizes that improving the education and skill levels of the current workforce will not only improve the state's economy and fiscal well being, but will also increase the ability of businesses to effectively compete in the global economy.

In general, strategies for the existing workforce should be designed to benefit business and industry by assisting in the skill development of existing employees (incumbent workers) and increasing employee productivity, and the growth of the company. Existing worker programs create a number of positive outcomes including: expansion of worker skills into new industry-demanded requirements; new career opportunities; retention of jobs that otherwise may have been eliminated; retention of existing personnel who otherwise may have left an organization; increase in the wages for trained workers; create opportunities for entry level workers through the

advancement of existing workers; and overall enhancement of the local and regional economic development efforts for the Commonwealth of Virginia.

WIA funds may be expended for incumbent worker training, subject to applicable regulations. WIA funds will be made available through a process designed to assist Virginia businesses to meet the diverse skills training needs of the incumbent workforce.

WIA funds may also be used for the development of layoff aversion strategies. WIA funds will be made available to assist Virginia businesses for early intervention to avoid layoff situations utilizing business retention plans.

For initiatives using statewide funds, a funding cap for employers will be applied and driven by the amount of funds available each year. For local initiatives using Title I funds, an amount equal to up to 20% of each year's base dislocated worker allocation may be used for allowable incumbent worker training activities as part of a broad layoff aversion strategy, with each local workforce board having wide policy discretion on any cap for amounts an eligible employer or business may be granted. Flexibility is also afforded to local areas in the use of some amount of Adult funds to serve employed adults.

Virginia promotes diverse approaches in addressing employer needs through the coordination of existing workforce programs that are administered by various state agencies. The Virginia Community College (VCCS) Workforce Development Services (WDS) Division shall provide coordination, as the state grant administrator for the WIA. At the local level, similar diverse approaches are expected and will be coordinated by the local workforce investment board, or its designee.

A. STATE INCUMBENT WORKER TRAINING (SIWT)

Provision of incumbent worker training with state-level funds may be deployed in any variety of ways.

Training services may be provided through Virginia's community colleges, school districts, area vocational-technical centers, state universities, licensed and certified post-secondary private institutions and from subject matter experts, consultants, or trainers from business. Employers are encouraged to use the State Eligible Training Providers List to identify potential training providers.

Training can be conducted at the employer's own facility, at the training provider's facility or at a combination of sites. WIA funds are not intended to supplant training normally provided by employers.

Early Intervention for Layoff Aversion

Among the activities allowed by the WIA is an assessment of the potential for averting layoff(s) in consultation with state or local economic development agencies. These activities are locally driven by the needs of the affected businesses and employees and are intended to occur much earlier than traditional rapid response activities. Assessment of the potential reason for a plant closing or mass layoff is required, including an assessment of the stability of the company. If there is an indication that a business closing or mass layoff might be averted, technical assistance may be provided to interested parties to investigate possible layoff aversion strategies. This may

include a pre-feasibility study for a company or group, including the workers, to purchase the plant or company and continue operations.

To qualify for the layoff aversion program, companies must develop a comprehensive layoff aversion plan. The following should be considered in developing aversion/business retention strategy: skills scan of employees; utilization of Labor/Management Committees (where appropriate); incumbent worker training/skills upgrading; customized training/on-the-job training; employee stock option purchase; shared work program; and solicitation of buyer through economic development partners. A company must also consider critical factors that must be in place or other entities that must be involved in order to ensure success of the aversion plan. Funds will be disbursed through individual contracts.

B. LOCAL INCUMBENT WORKER TRAINING

While the WIA does not allow local incumbent worker training under normal circumstances, Virginia has been granted a waiver to allow local workforce investment boards (WIBs) to do so in a manner consistent with Section 134 of the WIA and 665.200-220 of the Final Regulations. The waiver allows local workforce areas to use up to 20% of each year's base dislocated worker formula allocation to provide skill enhancement and training for the incumbent workforce **as part of a broad layoff aversion strategy**. Such local initiatives must be in accordance with WIA regulations, the waiver granted to Virginia by DOL ETA, requirements contained in this policy, and any local policy promulgated by local workforce boards.

It is anticipated that this waiver flexibility allows WIBs to be more responsive to meeting employer and business training objectives, resulting in increased employee productivity and potential company stability and/or growth. Likewise, incumbent workers develop new, higher level skills that benefit their employers, facilitate transition for promotion purposes, and enhance their chances for retention and their potential for increased earnings. An end-result of such programs can also create employment opportunities and the prospect of self-sufficiency for entry-level workers.

1) Local Incumbent Worker Training Program (the program) Establishment

Before expenditure of local funds on incumbent worker training, a local area must submit to the state the "Local Area Incumbent Worker Training Participation Form" at Attachment 1. The form must be completed in its entirety and signed by an authorized official of the local area.

2) Layoff Aversion

Subsequent to approving Virginia's waiver to allow local workforce areas the ability to offer incumbent worker training as part of a layoff aversion strategy, the U.S. Department of Labor has issued additional guidance on the definition of layoff aversion to be used in such a strategy.

For purposes of this policy, a layoff is averted when: 1) a worker's job is saved with an existing employer that is at risk of downsizing or closing; or 2) a worker at risk of dislocation transitions to a different jobs with the same employer or a new job with a different employer and experiences no or a minimal spell of unemployment.

Effective local partnerships are crucial to any effective layoff aversions strategies, as it is unlikely that incumbent worker training under this policy alone would be sufficient in all cases to avert a potential layoff situation.

While there are no absolute rules in terms of an absolute or finite definition of a layoff aversion situation, there are several indicators that can be used locally to justify the use of local dislocated worker funding for incumbent worker training:

- A) Declining sales
- B) Supply chain issues
- C) Adverse industry market trends
- D) Changes in management behavior or ownership
- E) Phasing out of certain function(s) with the introduction of new function(s) that require worker retraining
- F) The identification of changing skill requirements for existing employees that unless otherwise corrected would result in a company laying off or closing, such as: skill changes required by external economic or market forces, significant changes in technology or operating processes, rapidly changing industry or occupational job requirements, or emergence of new products.

At a minimum, a local determination to support incumbent worker training as part of a layoff aversion strategy can be determined using the following list of considerations:

- ✓ The changing skill requirements are outside of normal skill growth and upkeep that would be provided by the employer.
- ✓ The training will reasonably prepare workers to address these skill gaps.
- ✓ Unless provided with training, the potentially laid-off worker does not have marketable, in-demand skills.
- ✓ The new skills can be attained in a reasonable period of time.
- ✓ There exists a strong possibility of a job, either with the existing employer or a new employer, if the potentially laid-off worker attains new skills.

Participating employers must demonstrate a commitment to retain employees or otherwise provide a tangible benefit to employees who receive IWT. Any participating individual must not have already received a layoff notice.

3) Incumbent Worker and Employer Eligibility

- a. Eligibility Requirements for Incumbent Workers – There is no income eligibility for Incumbent Workers; however, the following minimum requirements must apply:
 - Incumbent worker must be 18 years old and above, a U.S. citizen or non-U.S. citizen legally authorized to work in the United States, and comply with Selective Service provisions.
 - Incumbent worker must be currently employed with the participating employer.
 - Incumbent worker must need skill upgrading or retraining, completion of GED or High School Diploma, basic skills upgrade, etc. to retain employment, be promoted and/or be successful in their employment with the company.

Employers and incumbent workers should be provided information on services and resources available through the local one-stop workforce and career service delivery system, including information on the local incumbent worker-training program. The provision of information may serve as a minimum core service for the purpose of the incumbent worker. Although the provision of information would not directly improve the worker skills to satisfy the employer business needs, provision of the information may serve as a qualifier for the worker's access to other services. For the purpose of the local incumbent worker-training program, the employer's assessment of the worker's skills and the determination that the worker requires skill improvement serve as an intensive service and may result in immediate qualification for training.

- b. Eligibility Requirements for Employers – The following minimum eligibility requirements for employers must be verified by the local area.

Employers must be:

- Operating in the Commonwealth of Virginia during the entire twelve month period prior to the application date, with at least one employee other than the owner if the employer entity a private business;
- Current on all Virginia tax obligations, including all applicable county, city and local taxes; and
- Proposing to deliver the training for employees based within Virginia.

The following employers are not eligible to participate:

- A business that has a history or pattern of failing to provide WIA participants with continued employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work.
- A business or part of a business that has relocated from any location in the United States, until the company has operated for 120 days, if the relocation has resulted in any employee losing his or her job at the original location.

Pursuant to WIA Section 667.268(a)(2)(b)(1)(92), a new or expanding business must verify whether it has relocated employment from another area, and must indicate whether any employee lost a job in the previous location as a result of the relocation.

A standardized pre-award review must be completed and documented jointly between the local area and the business establishment as a prerequisite to training.

4) Types of Training and Allowable Costs

Training activities may include, but not be limited to, Occupational Skills Training, Skill Upgrading and Retraining, Literacy Activities related to Basic Work Readiness, Job Readiness Training or Work Readiness Training, On-the-Job Training (OJT), and Customized Training. In instances where OJT or Customized Training is offered under this policy, provisions under Policy 00-8 Attachment B shall also apply. The local area must monitor against those provisions after

the training is complete and maintain documentation of such monitoring. OJT payments to employers are deemed to be compensation for the extraordinary cost associated with training participants and the cost associated with the lower productivity of participants in training, rather than wage subsidies to employers.

Training services under local initiatives may be provided through Virginia's community colleges, school districts, area vocational-technical centers, state universities, licensed and certified post secondary private institutions and from subject matter experts, consultants, or trainers from the applying business. Employers should be encouraged to use the State approved Eligible Training Providers List. The local workforce board should encourage providers in this program that are not already on the eligible training provider list to apply, in that their offerings may be of interest to employers or a sector of employers in an area. Training can be conducted at the employer's facility, at the training provider's facility, or at a combination of sites.

Proposed training costs must be reasonable and necessary and clearly relate to the purposes and activities of the project as described. Businesses must provide a minimum of 50/50 fund match of the training-related costs. Funds provided through this effort are not intended to supplant training normally provided by employers. Local areas are encouraged to leverage resources from multiple public and private resources within the community; however, activities funded by these WIA dollars cannot duplicate efforts funded by other such sources.

Examples of allowable activities and expenses:

- Training for participants for productive, high demand employment;
- Work-site-based learning strategies using cutting-edge technology and equipment;
- Training programs incorporating technological changes in the workplace;
- Training programs designed to impart learning to meet employer-specified or industry-specific skills;
- Train-the trainer instruction to build the capacity of businesses to effectively respond to the challenges of an increasingly diverse workforce
- Consumable training materials and supplies
- Textbooks
- Off-site facility rental expense directly related to an necessary for the training
- Rental of tools and equipment critical to the project
- Travel expense and per diem of instructor
- Instructor/trainer fees

Activities NOT eligible for funding:

- Costs incurred prior to the approval date of the application
- Construction or purchase of facilities or buildings
- Business relocation expenses
- Employment or training in sectarian activities
- Lobbying activities
- Direct Employee wages

5) Performance Standards for Incumbent Workers

Although incumbent worker activities in Virginia are viewed as business and employer services, to the extent local programs provide WIA funding to train and/or retrain workers, the following WIA performance standards apply:

- Local incumbent workers are included in the area's employment retention standard;
- Local incumbent workers are included in the area's participant average earnings standard;

Local areas are strongly encouraged through their local process to promote employer and industry-recognized credentials and certificates as valuable components of incumbent worker training projects.

Local incumbent workers are excluded from the entered employment standard.

The VOS system has been modified to allow for the entering of individuals served under this policy into the dislocated worker program.

ADULT PROGRAM FUNDS FOR EMPLOYED ADULTS:

Adult funds may also be used to provide training for individuals that are employed irrespective of this waiver. Refer to §663.310 of the WIA Regulations

(<http://www.doleta.gov/usworkforce/wia/finalrule.pdf>) and Virginia WIA Policy 03-03 (<https://www.vccs.edu/Portals/0/ContentAreas/Workforce/VWN/Policy03-03.pdf>), or seek assistance from the VCCS Workforce Development System office if necessary.

RESCISSIONS: N/A

REVISION/RESCISSION

Dr. Robert P. Leber
Chair, Virginia Workforce Council

Dr. Glen DuBois
Chancellor, Virginia Community College System

DATE(S): October 23, 2008 (Original Date);
March 23, 2010 (Administrative revisions to correct dated references and reflect waiver language approved by the US Department of Labor).
December 13, 2010 (Administrative revisions to incorporate elements of US Department of Labor Training and Employment Guidance Letter 30-09).

Commonwealth of Virginia Local Workforce Area Incumbent Worker Training

Program Participation Form

Local Workforce Area Information (please print or type)

Area Name	
Address	
City	
ZIP Code	
Telephone	
Fax	
E-Mail	

Program Parameters

	A local policy, plan language, or plan amendment has been adopted by the local area that establishes incumbent worker training as part of a layoff aversion strategy. Such a document is attached or will be submitted within 60 days of the date of submission of this participation form. Subsequent modifications will also be provided to the state.
	The local layoff aversion strategy meets the minimum considerations set forth in State WIA Policy 02-04, and is complimentary to applicable portions of TEGL 30-09 (http://wdr.doleta.gov/directives/attach/TEGL/TEGL30-09acc.pdf)
	No more than 20% of the annual formula dislocated worker base allocation will be budgeted for incumbent worker training. In the event that adult funds are transferred to the dislocated worker stream for this purpose, the total budget still cannot exceed a level greater than 20% of the base dislocated worker allocation.
	An annual accounting of the total amount used in a program year will be submitted to the state by August 1 st of each year.
	A local application process will be implemented to document all relevant information related to employers and individuals served under this program and to capture the required elements outlined in Policy 02-04. Records will be retained for review by state and federal officials in accordance with record-retention requirements.
	Participant information will be entered into the VOS system for required reporting purposes.
	The local area will notify the state of any subsequent decision to terminate the local incumbent worker training program.

Local Authorization - I verify by my signature that the information on this form is accurate and I am authorized to make submission on behalf of the local workforce area.

Signature
Title
Date