



**POLICY TRANSMITTAL**

<b>SUBJECT:</b>	<b>Workforce Innovation Opportunity ACT (WIOA) Incumbent Worker Training (IWT)</b>	<b>Policy/Guidance No.:</b> <b>#5 PY2021-22</b>
<b>APPLIES TO:</b>	<b>Workforce Services WIOA Adult and Dislocated Workers, Workforce Development Area (WDA) 23 (Miami-Dade and Monroe Counties) CareerSource center contractors (Service Providers), Businesses, and South Florida Workforce Investment Board (SFWIB) staff</b>	<b>Effective Date: 10/21/2021</b>
		<b>Revised Date: N/A</b>
		<b>Expiration Date:</b> <b>Indefinite</b>
<b>REFERENCE:</b>	<ul style="list-style-type: none"> <li>• Workforce Innovation and Opportunity (WIOA), § (3)(24), 134 (c)(3)(A)(1i, 134(d)(4), 181 (a)(1)(A) and (B), (b) (2), (3), (4), and (5), (d)(1-2); and 188</li> <li>• WIOA Final Rule, 20 Code of Federal Regulations (CFR) Parts 680.210(a)(-2); 680.770-840, 682.210(b), 682.320(a), (b)(3-4), 683.200(g), 683.250(a)(1-5); 683.275</li> <li>• 2 CFR 200.96</li> <li>• Training and Employment Guidance Letter (TEGL) 3-15; 10-16.Change 1; 19-16</li> <li>• The Reimagining Education and Career Help (REACH) Act (House Bill 1507) - Florida, Chapter No. 2021-164</li> <li>• Florida Statutes 445.003 (3)(a)(2-4)</li> <li>• CareerSource Florida, Administrative Policy Number FG-OSPS 89</li> </ul>	

**I. PURPOSE**

The purpose of the Incumbent Worker Training (IWT) policy is to provide all SFWIB stakeholders with uniform guidance regarding the use of WIOA funds to assist eligible businesses to retain workers and/or avert potential layoffs by upgrading the skills of their current workforce to avert potential layoffs; and/or improve the economic competitiveness of local business.

**II. BACKGROUND**

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Incumbent Worker Training is part of a comprehensive business engagement strategy designed to meet the special requirements of an employer (including a group of employers) by upgrading the skills of their current employees. The IWT program is intended to assist businesses in retaining a skilled workforce and/or avoid the need to lay off employees by providing reimbursement for preapproved, direct, training related costs, while assisting the workers in obtaining the skills necessary to retain employment. The IWT must increase the competitiveness of the employee and the employer or group of employers. The IWT may only be conducted with the commitment of the employer or group of employers to retain the trained incumbent worker(s) for at least one year following training completion; and/or the promotion of the incumbent worker(s) to a higher paying position.

### III. Definitions

#### A. Incumbent Worker

An individual currently employed, meets the Fair Labor Standards Act requirements for an employer-employee relationship, and has an established employment history with the employer for six months or more. However; if the event that the incumbent worker training 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 the employees being trained meet the employment history requirement. An incumbent worker does not have to meet the eligibility requirements for career and training services for the Adult and Dislocated Worker program.

#### B. Conflict of Interest

The South Florida Workforce Investment Board (SFWIB) will not favor a grant application from and/or to a member of the SFWIB over another business in the community. IWT shall be made based upon what will be most beneficial to the employee and business.

The SFWIB shall be notified whenever an IWT application is connected to a SFWIB member, Service Partner, or employee.

Service Partners are prohibited from recommending an IWT grant application or making IWT referrals to businesses who are members of their immediate family or members of families of other service partner staff or SFWIB staff.

The contracted IWT business shall not train an employed worker who is a relative (member of the family) of the business. Relative is defined as: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

#### C. Credentials

Credentials include, but are not limited to, a high school diploma, including special diplomas; GED or other recognized equivalents; post-secondary degrees/certificates; recognized skill standards such as occupational completion points (OCP); licensure or industry-recognized certificates; and, successful completion of On-the-Job Training (OJT) and IWT. Local credentials may be counted. Countable credentials should have a direct correlation to industry standards, requirements of the business and shall be recorded as “employer specific”. In some instances,

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attainment of Occupational Completion Point (OCPs) as designated by the Florida Department of Education may also be counted as credentials

D. Layoff aversion

A continuum of strategies targeted to specific employers or industries that are experiencing a decline and have the potential to undergo layoffs, or are experiencing a serious skills gap that impacts their ability to compete and retain workers. A layoff is considered to be averted when:

1. A worker's job is saved at an existing employer facing a risk of downsizing or closing; or
2. A worker at risk of dislocation faces a brief gap or unemployment when transitioning to a different job with the same employer or is hired at a new job with a different employer.

E. Self-Sufficiency

Self-Sufficiency refers to an identified wage that allows an individual to provide for oneself without the need for supportive services.

**IV. Eligibility**

A. Business

Businesses that meet the following criteria are considered eligible and may, subject to available funding, be awarded an IWT grant to provide training to its employees through an executed IWT agreement with an approved SFWIB service partner.

1. Located in the State of Florida;
2. A "for-profit" company, or
3. A hospital operated by a non-profit or local government entities in the State of Florida;
4. In operation for a minimum of one year prior to the application date (as verified by Florida Department of State Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org)));
5. Demonstrate financial viability;
6. Maintains Workers Compensation Insurance (if applicable);
7. Have at least one full-time employee (must be a Florida Resident AND W-2 employee). The employees W-2 must match the company name that is on the application. For a sole proprietor where the business owner is the only employee, the sole proprietor may be considered as the full-time employee; and
8. Has not received an IWT award in the previous or current program year.

For purposes of this policy, the term "business" includes hospitals operated by nonprofit or local government entities which provide nursing opportunities to acquire new or improved skills.

The following businesses are not eligible to apply for IWT funds:

1. Not-for profit agencies or organizations. **[Note:** This requirement is not applicable to hospitals operated by non-profits or local government entities in the State of Florida.]
2. Retail establishments.

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3. Entities whose administrations are comprised of volunteers.
4. Local Workforce Development Boards and their administrative entities.
5. Labor Unions.
6. Federal, state, county, or city governmental entities. **[Note:** This requirement is not applicable to hospitals operated by non-profits or local government entities in the State of Florida.]
7. Businesses that received an IWT award in the current or previous program year.

**B. Incumbent Worker (WIOA Adult or Dislocated Worker)**

An incumbent worker does not *necessarily* have to meet the eligibility requirements for for WIOA career and training services for the adult or dislocated worker programs, unless they also are enrolled as a participant in the WIOA adult and dislocated worker program.

The incumbent worker is further defined as follows:

1. At least 18 years of age;
2. Is at least one of the business applicant, working a minimum of 37.5 hours per week and receives a W2 from the employer;
3. A citizen of the United States or a non-citizen whose status permits employment in the United States;
4. A Florida resident working at a physical location in Florida; and
5. Employed six months before the signature date of the application.
6. Currently employed and in need of additional training to avert a layoff or be retained by their employer.

**C. Service Partners**

Entities that have a current Workforce Services contract are eligible.

**D. Training Providers**

Businesses providing training to their employees through an IWT may, at its discretion, utilize a Training Provider(s) that appears or does not appear on the CareerSource South Florida (CSSF) approved Eligible Training Provider List (ETPL), or may use their own staff to provide the training. Trainers that are not currently on the payroll of the employer or on the EPTL must be procured in accordance with the minimum procurement requirements as set forth in 2 CFR 200.

**V. Application/Agreement**

**A. Conditions**

1. Employed workers may not commence training and businesses may not make training-related purchases prior to SFWIB approval of the IWT grant application. The agreement is executed when signed by all required parties, i.e., Service Provider and business

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2. IWT funds may not be used or proposed to be used for:
  - a. The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location.
3. The Pre-award Checklist must be completed to validate the following:
  - a. The business has operated at its current location for at least 120 days. If less than 120 days and the business relocated from another area in the U.S and employees were not laid off at the previous location as a result of the relocation.
  - b. The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether Worker Adjustment and Retraining Notification (WARN) notices relating to the employer have been filed.
4. The following sections must be pre-negotiated and included in the IWT agreement:
  - a. Percentage of reimbursement;
  - b. Frequency of reimbursement;
  - c. Timeframe of achievement of credentials
5. The appropriate signatory for the business shall be either the owner where the business is incorporated; a partner where the business is a partnership; or an officer if the business is a corporation. Corporations sometimes designate signatories other than their officers. In such instances, written authority transferring signatory responsibilities must be obtained by the individual responsible for developing the agreement.
6. Service providers are responsible for reviewing the application with the business prior to submission to CSSF to ensure that the business wholly understands and are familiar with the requirements of a grant award.
7. Businesses approved for funding by CSSF must enter into an agreement with the Service Partners and commit to completing the training as proposed in the application and/or as negotiated with the Service Partner.
8. The incumbent worker's credential attainment must be adequately documented by the business and Service Partner. The Service Partner should also record the information in the appropriate State and local Workforce system(s) and place a copy in the participant's file.
9. Businesses shall establish and maintain records with respect to all matters covered by the IWT agreement. Businesses shall retain such records for at least five (5) years

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from the date of final payment, or until all related federal and state audits or litigation is completed, whichever is later. Businesses shall allow public inspection of all documents, papers, letters or other materials made or received by the business in conjunction with the IWT agreement, unless the records are exempt under federal or state law.

10. Businesses must certify that all information provided for the purposes of requesting reimbursements and reporting is true and accurate.
11. Businesses must agree to comply with the provisions of the Certification Regarding Lobbying, certification regarding Debarment, Suspension and Other Matters, Public Entity Crime, Florida Clean Indoor Air Act and the Certification regarding a Drug-Free workplace.
12. Businesses shall comply with the nondiscrimination and equal opportunity provisions of the federal or state law.

**B. Application Review**

1. The CSSF Executive Director will have the authority to approve application requests \$50,000 or less. Awards will be included in the Executive Director's report to the South Florida Workforce Invest Board (SFWIB).
2. Requests exceeding \$50,000 must be approved by the SFWIB and/or appropriate Council at the next Board meeting.
3. Applications that fail the CSSF review process may not be recommended for approval

**C. Duration**

Duration of an IWT will be based on the need for training and not the maximum funding allowed under this policy. The Occupational Information Network's (ONET) Specific Vocational Preparation Range (SVP) will be used to determine the appropriate occupational training needed. Using the SVP provided by ONET, the following duration times are recommended in addition to the participant's prior education and work history.

The IWT agreement(s) must be completed during the current program year, which begins on July 1st and must be completed no later than June 20<sup>th</sup> of the following year.

**D. Funding and Compensation**

Funding priority shall be provided in the following manner:

1. Businesses that provide employees with opportunities to acquire new or improved skills by earning a credential on the Master Credentials List.
2. Hospitals operated by nonprofit or local government entities that provide nursing opportunities to acquire new or improved skills.
3. Businesses whose grant proposals represent a significant upgrade in employee skills.

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4. Businesses with 25 employees or less, businesses in rural areas, and businesses in distressed inner-city areas.
5. Businesses in a qualified targeted industry or whose grant proposal represent a significant layoff avoidance strategy.

This priority does not include an increased reimbursement percentage, business applicant that meet the aforementioned criteria shall receive priority during times of limited funding.

If a company has more than one location in Florida, they are treated as either one company or separate companies depending upon the Federal Employer Identification Number (FEIN). If the locations operate under different FEINs, they will be considered separate companies and shall submit separate applications and receive separate awards.

If the locations operate under one FEIN, the locations will be considered as one company and will therefore need to join their training efforts, submit one application and receive one award.

The non-federal share of the cost of providing the IWT shall be paid by the participating business and may include the amount of the wages paid by the business to a worker while the worker is attending a training program. The business may provide the match in cash or in-kind, fairly evaluated.

1. Training Providers are paid by the business for training costs.
2. The SFWIB will set aside a pool of training funds that will be utilized for IWT initiatives.
3. Businesses will be reimbursed by Service Partners with the final reimbursement upon the completion of the last training and credential attainment, and proper documentation has been provided. The reimbursement amounts will be based upon the relevant funding stream requirements and any waivers at the time of the agreement

**E. Training Completion and Outcomes**

1. All IWT initiatives shall be performance based with specific measurable outcomes, including training completions and the number of participants trained.
2. Training must result in the attainment of a credential that leads to self-sufficiency, as established during the contract negotiations.

**F. Grievances and Appeals**

1. Service Partners shall advise the incumbent workers of their right of appeal using either the business grievance procedures, or those of the CSSF, if previously agreed with the business. If a business elects to use its own grievance procedures, the business must agree to provide information to CSSF as to actions taken under those procedures. If the participant is not satisfied with the outcome after using the business' grievance procedures, then he/she may elect to file a grievance with CSSF under the CSSF grievance procedures.

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2. If the application is not approved, the appropriate CSSF staff shall notify the business in writing. Businesses may appeal an application denial by the CSSF in accordance with the CSSF appeal process.

**G. Prohibitions**

1. A participant in a program or activity authorized under Title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).
2. A participant in a program or activity under Title I of WIOA may not be employed in or assigned to a job if:
  - a. Any other individual is on layoff from the same or any substantially equivalent job;
  - b. The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant or
  - c. The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.
3. Participants shall not be employed to carry out the construction, operation, or maintenance of any part of any facility that is used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants).
4. Businesses that fail to meet the conditions as outlined in the executed agreement may not be considered for future IWT agreements.
5. No officer, employee, agent, or representative of the Business or Service Partner may charge a participant a fee for the placement of such individuals in or to a training funded under an IWT agreement or amendments thereof.
6. IWT funded agreement must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under Title I of WIOA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the agreement is initiated.
7. IWT funds shall not be used for any political activity, lobbying of federal, state or local legislators, or to promote or oppose unionization.
8. IWT funds may not be used to directly or indirectly assist, promote or deter union

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organizing.

9. IWT funds shall not be used to fund employees of home-based businesses.
10. The encouragement or inducement of any business or part of a business, to relocate from any location within the United States, if the relocation results in any employee losing his or her job of such business at the original location.
11. IWT funds shall not be used for company-specific assessments of job applicants or employees, for any business or part of a business that has relocated, until the date that is 120 days after the date on which such business commences operations at the new location, if the relocation of such business or part of a business results in a loss of employment for any employee of such business at the original location and such original location is within the United States.

H. Repayment

Violation of section H., or any portion thereof, of this policy may result in the repayment of said funds provided to an entity and shall be equal to the amount expended in relation to the violation.

I. Exceptions

The SFWIB/CSSF Executive Director must approve exceptions to this policy, or any part thereof, in writing.

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