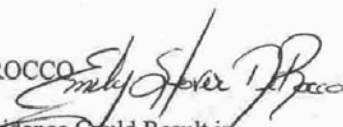




SEP 28 2005

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

FROM: EMILY STOVER DeROCCO 

SUBJECT: Insufficient Federal Guidance Could Result in
Misuse of Incumbent Worker Training Program Funds
Draft Management Letter No. 06-05-003-03-390

The Office of Inspector General (OIG) suggests in the referenced Draft Management Letter that Arkansas' use of Workforce Investment Act (WIA) funding for incumbent worker training was contrary to the WIA statute and regulations. ETA strongly disagrees with the OIG's findings. However, ETA does agree that additional policy guidance is needed as it relates to both incumbent worker training generally and as it relates to the economic development and employer generating activities that are prohibited by WIA. Below are general comments on the flexibility offered under WIA for investment in incumbent worker training and specific comments that speak to the issues identified in the Draft Management Letter.

General Comments

It is the position of this Administration that for the workforce investment system to be relevant and successful in promoting a competitive workforce, it must be a strong component of economic development. State and local workforce investment boards must continuously assess where the jobs will be, assess the skills and competencies needed for those jobs, and develop investment strategies that ensure workers have the right skills needed by businesses. This clearly necessitates an ongoing and close connection to economic development efforts within a state or community. This approach is fully aligned with the provisions of the WIA. WIA references are very specific indicators that the authors of the Act fully understood the connection of workforce development to economic development.

One of the stated purposes for the workforce investment system in Subtitle B of WIA – Statewide and Local Workforce Investment Systems is to “enhance the productivity and competitiveness of the Nation.”

Membership on the State Workforce Investment Board, as prescribed in Section 111 of WIA, is business driven and business led, and governors are encouraged to designate state agency officials responsible for economic development as members.

Section 112 (b)(4)(C) provides that states should consider the economic development needs of the state in the development of the state's strategic plan for workforce investment.

At the same time, WIA also provides specific safeguards for use of funding for some economic development activities by restricting their use for business relocation (Section 181(d)) or capitalization of businesses and other activities not directly related to training (Section 181(e)).

Another premise of the WIA is providing states and local areas with maximum flexibility to design a workforce investment system and utilize funding in ways that meet the specific needs of states and local areas. A unique feature of this flexibility is that statewide funds are reserved for governors to use for a wide array of workforce activities, including the implementation of innovative incumbent worker training programs.

In the 21st century economy, where innovation and technology are continuously changing the skills needed by almost every business and industry at an ever increasing pace, it is critical to have innovative workforce strategies, including incumbent worker training, that build and secure the economic competitiveness of our businesses and our nation. Through WIA reauthorization, the Administration is proposing enhanced availability of incumbent worker training for this purpose.

Specific Comments

- 1. The OIG finds the funds used by Arkansas for incumbent worker training were used for "business start up costs" and as incentive money for the business to locate its plant in Jonesboro, AR, and not training of incumbent workers.**

The OIG raises the issue in this section as to whether the reported incumbent worker training costs were actually spent on training or on economic development activities not directly related to training. Apart from this factual issue, ETA does not agree with the underlying premise of this finding. The OIG's statements would indicate that the costs associated with training in conjunction with a new business as it is ramping up should be considered "business start up costs" and not appropriate for use of WIA funds. There is nothing in the WIA statute that indicates this distinction, and it was not part of the legislative debate when WIA was initially passed. It is ETA's position that in the context of economic development, where a new business is being created or expanded in a community, it is entirely appropriate for WIA funds to be expended for training workers with the skills needed for the new jobs. The section quoted by the OIG from the preamble to the WIA rules very specifically says that incumbent worker training is frequently part of an economic development or business retention strategy.

The OIG indicates that some of the money was used to reimburse salaries of supervisors who conducted the training. There is no statutory or regulatory direction on the components of training costs and no limitation that prevents instructors from being employees of a private sector company. Other provisions under WIA are consistent with an interpretation that it is feasible to reimburse employers for training costs such as utilizing staff as instructors. For example, under the WIA formula programs for adults and dislocated workers, it is possible for private sector companies to be eligible training providers and the costs of training workers that ultimately become their employees may be covered. In addition, the formula funds may also be used for on-the-job training, and employers are reimbursed the extraordinary costs associated with the training.

2. The OIG finds that Arkansas did not have a policy that defines “incumbent worker” eligibility other than a policy for a separate state training program which would have excluded the use of state funds for training the Nestle workers.

The determinative issue for use of WIA funds for economic development activities is whether the activities are directly related to training for eligible individuals (20 CFR §667.262). Incumbent worker training is expressly authorized as a statewide activity and neither the WIA statute nor regulations make any distinction regarding the length of employment of participating workers that would suggest that new hires are ineligible for such training.

ETA agrees that the establishment of better state policies on incumbent worker training is desirable and has the potential to lead to better services and more effective administration. However, the failure to establish a specific policy for this program does not render the costs of the training unallowable.

The WIA statute and regulations do not mandate that states have a policy that defines incumbent workers. The regulations at 20 CFR §665.220 indicate that “States **MAY** establish definitions to determine which workers, or groups of workers, are eligible for incumbent workers services . . . [emphasis added].” The fact that Arkansas defined incumbent workers for a separate state-funded training program has no relevance. It is ETA’s position that incumbent workers may be broadly defined to include any employed worker, including recently hired workers.

3. The OIG recommends ETA issue guidance clarifying the parameters of incumbent worker training under WIA. The OIG suggests the policy include establishing a minimum time frame for employment in order to be considered an “incumbent worker.”

ETA agrees that clarity is needed regarding incumbent worker training policy and policy guidance was under development prior to the OIG's letter. ETA does not agree with limiting the definition of "incumbent workers." It is the Administration's position that states and local areas should have maximum flexibility in developing their workforce investment strategies to align with the economic needs of their states and communities, including investments in incumbent worker training.

Summary

ETA is currently requesting additional information from the state to validate that no WIA funds were spent improperly. ETA will be issuing policies on both incumbent worker training and economic development activities in the near future.