

RAPID RESPONSE AND LAYOFF AVERSION ACTIVITIES

EXECUTIVE SUMMARY

This policy consolidates previous *Workforce Investment Act* (WIA) Rapid Response guidance into a single comprehensive directive, and distinguishes Rapid Response activities from Additional Assistance. It provides the California Workforce Development Board's (State Board) policy framework for Local Workforce Development Boards (Local Board) to design and implement a local/regional business engagement strategy and articulates the role of layoff aversion within effective Rapid Response systems.

It does not make any changes to the current formula allocation methods for Rapid Response funds. It also provides direction and guidance for conducting layoff aversion activities as required by the federal *Workforce Innovation and Opportunity Act* (WIOA).

This policy applies to all recipients of WIOA 25 Percent Dislocated Worker funds, and is effective upon release.

This policy contains only state-imposed requirements.

This directive finalizes Workforce Services Draft Directive WSDD-142, issued for comment on May 6, 2016. The State Board received 12 comments. The comments did not result in any changes to the directive. A summary of the comments is provided as Attachment 6.

This directive supersedes Workforce Services Directive WSD14-03, dated September 3, 2014. Retain this directive until further notice.

REFERENCES

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- WIOA (Public Law 113-128) Sections 3(15) and (51), 107(d)(4), and 134(a)(2)(A)
 - Title 20 *Code of Federal Regulations* (CFR) WIOA Notice of Proposed Rule Making (NPRM) Section 682.300-340
 - [Training and Employment Guidance Letter \(TEGL\) 03-15](#), Subject: *Operating Guidance for WIOA* (July 1, 2015)

- [Training and Employment Notice \(TEN\) 09-12](#), Subject: *Layoff Aversion in Rapid Response Systems* (August 31, 2012)
- [TEN 31-11](#), Subject: *The Rapid Response Framework* (March 1, 2012)
- [TEN 32-11](#), Subject: *Rapid Response Self-Assessment Tool* (March 1, 2012)
- [TEN 03-10](#), Subject: *The National Rapid Response Initiative* (August 9, 2010)
- California Labor Code Sections [1400-1408](#)
- [California's Strategic Workforce Development Plan: 2013-2017](#), *Shared Strategy for a Shared Prosperity*
- [Workforce Services Directive WSD15-23](#) Subject: *Transfer of Funds – WIOA Adult/Dislocated Worker Programs* (March 29, 2016)
- [WSD15-19](#) Subject: *Revised Amendment to PY 2015-16 RR Allocations and Guidance on Use of these Funds for WIOA Transition Activities* (March 14, 2016)
- [WSD13-1](#) Subject: *Authorization to Work Verification Requirements* (July 2, 2013)
- [WSD12-3](#) Subject: *Quarterly and Monthly Financial Reporting Requirements* (July 18, 2012)
- [Workforce Investment Act Directive WIAD05-18](#) Subject: *Dislocated Worker 25 Percent Funding Policy* (June 14, 2006)
- [WIAD04-22](#) Subject: *State Required Surveys of Dislocated Workers* (June 15, 2005)
- [WIAD02-9](#) Subject: *Worker Displacement Prohibition* (November 22, 2002)
- [Workforce Services Information Notice WSIN15-21](#) Subject: *Implementation of the CalJOBS Customer Relations Management Module* (December 30, 2015)

BACKGROUND

Federal law requires that states set aside not more than 25 percent of their WIOA Dislocated Worker funding for two statewide activities:

1. Rapid Response to assist workers and businesses at risk of layoff or affected by layoff.
2. Additional Assistance for Local Boards to apply for if there is a significant increase in unemployment in their areas caused by plant closure, downsizing, natural disaster, or “other events.”

Federal law provides discretion to the Governor to develop specific policy. In California, current policy is to formula-allocate the Rapid Response funds (half of the total 25 percent funds) to Local Workforce Development Areas (Local Area).

California's Rapid Response system has evolved since the implementation of WIA, with Local Boards leading innovative and proactive local Rapid Response systems. In addition, the WIOA requires states and Local Areas to include layoff aversion as an integral component of Rapid Response policy.

In response to this evolution, the State Board established a Rapid Response/Layoff Aversion Workgroup to consolidate various state guidance into a single comprehensive document and to recommend policy, consistent with the WIOA, that requires proactive business engagement and layoff aversion strategies that can assist a business to avoid layoffs through an incumbent worker training program, use of the Work Sharing Program, or in the event of layoffs, assists workers in quickly re-entering the workforce through rapid re-employment services.

Rapid Response

The primary purpose of Rapid Response as stated in federal guidance is to enable affected workers to return to work as quickly as possible following a layoff, or to prevent layoffs altogether. To accomplish this, the workforce development system must be coordinated, comprehensive, and proactive in communicating with business. This includes providing labor market and workforce information, integrating industry requirements into training strategies and career pathways, brokering relationships and job connections, making services efficient and easy to access, and coordinating with regional partners to reduce duplication.

A sound business engagement infrastructure should include early warning systems, which are necessary to ensure a timely response to worker dislocations. Early indicators can be recognized in a variety of ways, including through close communication with employer representatives, industry groups, organized labor, utilities, or through local media. Rapid Response also tracks labor market trends, increased Unemployment Insurance claims, public announcements through the [California Worker Adjustment and Retraining Notification \(WARN\) Act](#) notices, and analyzes economic data to assess the health of businesses. In each region, systems should be in place to regularly monitor all potential early warning indicators and notification channels, and employers must be informed about their legal responsibilities to issue advance notifications of layoffs and closures.

It is critical that regional business engagement teams build relationships with employers, labor organizations, workforce and economic development agencies, training institutions, service providers and community-based organizations. Proactive business engagement systems rely on good intelligence. Their value to economic development efforts can be increased by providing ready access to information regarding available talent. Regions can gain a competitive edge when they can leverage accurate information about regional economic trends, labor markets, new business development, impending layoffs, regional assets, and education and training resources.

The Role of Layoff Aversion

A layoff aversion strategy helps employers retain a skilled workforce and/or provides workers rapid transition to new employment, minimizing periods of unemployment. Layoff aversion is a central component of a high-performing business engagement strategy, requiring a shared responsibility among numerous partners at the state, regional, and local levels.

It is important to emphasize that Rapid Response does not stop layoffs. The intent of layoff aversion as a business engagement strategy is to provide business solutions to companies that want to save jobs. To save jobs, a business engagement team must be able to identify an at-risk company well in advance of layoffs, get executive level commitment to work together, assess the needs of the company, and deliver solutions to address risk factors. This requires a new culture of prevention and a strong infrastructure, including clarity of roles among regional partners. It requires data collection and analysis of regional labor market and industry sector trends, early warning mechanisms that can alert of problem areas and well-trained staff with capacity to build relationships among businesses, labor organizations and civic leaders.

Led by regionally coordinated Local Boards, business engagement teams should be built on regional partnerships among a range of organizations and intermediaries that can help identify and design appropriate business and employment solutions. Local Boards should include a variety of partners including the Department of Commerce's Trade Adjustment Assistance for Firms, the Manufacturing Extension Partnership or other sector-based partnerships, public and private economic development entities, Chambers of Commerce, Small Business Development Centers, community-based organizations, community colleges, local labor councils, and others.

Business engagement activities such as customized training, incumbent worker training, and work sharing strategies are among the many WIOA funded strategies that the workforce system can deploy to assist companies in averting layoffs.

As described in the Department of Labor's (DOL) [TEGL 03-15](#), incumbent worker training provides both workers and employers with the opportunity to build and maintain a quality workforce. Incumbent worker training can be used to help avert potential layoffs of employees, or to increase the skill levels of employees so they can be promoted within the company and create backfill opportunities for the employers. Under Section 134(d)(4) of WIOA, Local Boards can use up to 20 percent of their adult and dislocated worker funds to provide for the federal share of the cost of providing incumbent worker training. Incumbent worker training needs to take into account the following factors:

- The characteristics of the participants in the program.
- The relationship of the training to the competitiveness of a participant and the employer.
- Other factors the State or Local Boards may determine appropriate (e.g., the number of employees participating in the training, wage and benefit levels of those employees [both pre and post participation earnings]), and the existence of other training and advancement opportunities provided by the employer).

Employers are required to pay for a significant cost of the training for those participants in incumbent worker training; this can be done through both cash and/or in-kind payments. The wages paid to participants, while in training, may be considered as a source of matching funds. Rules for matching funds are provided in the Uniform Guidance and DOL exceptions at 2 CFR 200.306 and 2 CFR 2900.8, respectively. Under Section 134(d)(4)(D) of WIOA, the minimum amount of employer share in the incumbent worker training depends on the size of the employer:

- At least 10 percent of the cost for employers with 50 or fewer employees
- At least 25 percent of the cost for employers with 51 to 100 employees
- At least 50 percent of the cost for employers with more than 100 employees

Employer share must be reported on the ETA-9130 quarterly financial report. The DOL encourages states and Local Areas that use incumbent worker training to ensure contracts with employers provide sufficient information to include participants in reporting. Incumbent workers should be reported in the WIASRD under element number 911 until a new reporting layout is available.

Definitions and Resources

Business Cycle – A business cycle is identified as a sequence of four phases:

- Contraction – A slowdown in the pace of economic activity
- Trough – The lower turning point of a business cycle, where a contraction turns into an expansion
- Expansion – A speedup in the pace of economic activity
- Peak – The upper turning of a business cycle

Customer Relationship Management Module (CRM) – The CRM is a CalJOBSSM based tool, supported by the Employment Development Department (EDD), which allows Local Boards and their partners who have access to the CalJOBS system to record, track and report a variety of business engagement activities at the individual company level.

Economic Development – The [International Economic Development Council](#) defines economic development as a program, group of policies, or activity that seeks to improve the economic well-being and quality of life for a community, by creating and/or retaining jobs that facilitate growth and provide a stable tax base. For a good resource, see the [California Association of Local Economic Development](#) and the [Governor's Office of Business and Economic Development](#).

Employer Contact (Rapid Response 121 Report) – A visit to an employer by staff for the purposes of conducting Rapid Response activities. This visit may be in person, by telephone or through the use of other interactive technology. This is a cumulative report.

Employer Contact (122 Report) – This form is used only to report the development, implementation and completion of a business solution strategy(s) relating to and resulting in job retention at the current place of employment and the rapid re-employment (talent transfer) of affected workers. This is a cumulative report.

[Employment Training Panel \(ETP\)](#) – The ETP provides incumbent worker training funding to employers to assist in upgrading the skills of their workers through training that leads to good paying, long-term jobs. The ETP is a funding agency, not a training agency. Businesses determine their own training needs and how to provide training. ETP staff is available to assist in applying for funds and other aspects of participation.

Incumbent Worker – An employee of a business applying for incumbent worker training funds to up-skill and/or retrain in accordance with the WIOA.

Incumbent Worker Training – Developed with an employer or employer association to upgrade skills of a particular workforce. The employer agrees to retain the trained worker(s) upon completion of the training. Frequently, such training is part of an economic development or layoff aversion strategy.

Jobs Retained – A layoff is averted when (1) a worker’s job is retained with the current employer that is at risk of downsizing or closing, or (2) when a worker at risk of dislocation transitions to a different job with the same employer.

Layoff Aversion – The process of using a series of activities, studies, and networks to examine a business or sector’s cycle, organizational conditions, markets, and broad community relationships etc., in an effort to determine workforce and economic solutions that can mitigate job loss or save jobs.

[Manufacturing Extension Partnership \(MEP\)](#) – The National Institute of Standards and Technology’s Hollings MEP works with small and mid-sized U.S. manufacturers to help them create and retain jobs, increase profits, and save time and money. The MEP also works with partners at the state and federal levels on programs that put manufacturers in position to develop new customers, expand into new markets and create new products.

Rapid Re-Employment (Talent Transfer) – A laid off worker is hired by a different employer and experiences short term unemployment (45 calendar days or less). To qualify for this activity, a confirmed job offer must be on file from the hiring employer and issued within 45 days of the date the participant becomes unemployed.

[Small Business Development Centers of California \(SBDC\)](#) – The SBDCs provide training and no-cost one-on-one counseling to help small businesses and entrepreneurs overcome obstacles to growth. Topics range from: start-up assistance, planning for growth and expansion, technology and innovation and access to capital.

[Work Sharing Program/Short Term Compensation](#) – Work Sharing is described in Section 1279.5 of the California Unemployment Insurance Code and provides employers with an alternative to layoffs and provides their employees with the payment of reduced Unemployment Insurance benefits. Note: This activity is considered a job saved/retained as this strategy does minimize the impact on the Unemployment Insurance fund and should be reported on the Layoff Aversion Form 122.

POLICY AND PROCEDURES

The EDDs [WSIN15-21](#) communicated to the local workforce system the availability of a new module for CalJOBS. Local Boards and their staff responsible for business outreach activities are strongly encouraged to use this module to track all business engagement activities. Local Boards are encouraged to provide access to and training for the CalJOBS CRM module, as use of this module regionally across Local Areas will help eliminate duplicate contacts from local/regional agencies to the same employers, provide information regarding historical activities and the types of activities being conducted with an individual employer.

On May 18, 2004, the State Board adopted a Dislocated Worker 25 percent funding policy, which includes the following components and related recommendations.

Dislocated Worker 25 Percent Set-aside

State Board policy specifies that the state will set aside 25 percent of the state's WIOA Dislocated Worker funding for California's Rapid Response System and for Additional Assistance to dislocated workers in Local Areas. Of this 25 percent, one-half is reserved for Rapid Response activities and one-half is reserved for Additional Assistance to Local Areas. The state will reserve a portion of the 25 percent Additional Assistance funds for statewide dislocated worker activities.

Rapid Response Funding

The Rapid Response set-aside funds will be allocated based on a three-part formula and layoff aversion component as follows:

- **Baseline funding** is allocated equally among Local Areas to ensure, at a minimum, that some capacity exists in each Local Area for the coordination and conduct of Rapid Response activities. Allocations to Local Areas comprised of more than one county will include an additional allocation of \$50,000 for each additional county. Of the Rapid Response set-aside funds, 30 percent will be reserved for this baseline funding
- **Layoff-based funding** is for Local Areas that serve regions where significant numbers of dislocation events occur. This allocation will be based on quantitative layoff data. Funds

will be allocated to Local Areas in proportion to the number of affected workers offered Rapid Response services in response to layoffs reported to the state. This methodology will ensure California meets WIOA requirements to provide services to assist groups of workers affected by mass layoffs, permanent business closures, and natural or other disasters. Of the Rapid Response set-aside funds, 45 percent will be reserved for this layoff-based funding.

- **Hold-Harmless** minimizes funding losses from year-to-year. A portion of the Rapid Response set-aside funds will be used to ensure that no Local Area receives less than 75 percent of their prior-year share of statewide funds distributed for baseline and layoff-based activities. This policy also limits any Local Area's year-over funding increase to 100 percent of their prior-year allocation.

Layoff Aversion Funding

Layoff Aversion activities will be funded from the previously state-held Rapid Response Competitive Solicitation Fund. These funds will be distributed to Local Areas based on the Local Area's relative share of the Rapid Response formula allocations.

Additional Assistance Funding

Additional Assistance Funding will continue to be available as currently outlined in [WSD13-2](#), Dislocated Worker Additional Assistance Projects. An updated future policy directive will be issued to separate Additional Assistance from Rapid Response guidance and clarify the policy and procedures for use these funds.

Uses of Rapid Response 25 Percent Funds

Attachment 1 describes the required and allowable uses of Rapid Response funds. Layoff aversion activities are a required activity in WIOA. It is the state's policy priority that the full scope of required Rapid Response activities, as described in the WIOA, must be provided in each Local Area.

The scope of business solutions that may be provided at Rapid Response events is not restricted to the activities described in Section 134 of WIOA. Local Boards are encouraged to leverage other local or state funding sources to provide a broader scope of business solutions. Examples include assisting with Trade Adjustment Assistance, Unemployment Insurance claim filing, economic development, financial assistance counseling, and mental health counseling.

Reporting

Baseline, layoff-based, and hold-harmless Rapid Response funds will continue to be issued to each Local Board, in the master subgrant, as grant codes 540 and 541. These formula funds may be spent on the wide range of required and/or allowable activities. Participants receiving

Additional Assistance services must be enrolled in grant code 241. Local Boards shall continue to report participant enrollments receiving incumbent worker training using Rapid Response formula funds under grant code 2285.

Layoff Aversion funding will be issued under grant codes 292 and 293 in each Local Board's master subgrant. These funds can be spent on the wide range of required and/or allowable activities. Local Boards are to report participant enrollments receiving incumbent worker training using layoff aversion funds under grant code 2285.

Rapid Response Reporting Requirements (121 Report)

Activities to be included on the Rapid Response 121 Report are those relating to employer contacts in response to layoffs or closures, as defined by the State Board. The Rapid Response 121 report must be completed to report all employer layoff/closure planning/orientation meetings. Planning meetings and/or orientations of nine or less employees are for information only and will not be used in the calculation of the dislocation-based formula funding factor.

Complete a separate line item entry for each employer contact occurring on different days, locations, or employers. Complete a single line item entry if multiple sessions are conducted on the same day, for a single employer with the note of how many multiple orientations were made that day. Note – this is a cumulative report.

The Rapid Response 121 Report and line item instructions are included as Attachments 2 and 3. The Rapid Response 121 Report must be completed quarterly and submitted via email by the 20th of the month following the quarter's end to the Local Area's assigned Regional Advisor, with a "cc" to the Local Area administrator.

Layoff Aversion Reporting Requirements (122 Report)

This is a new report, specifically developed to capture and report business solution strategies delivered to business during any stage of the business cycle that relate to and result in job retention and/or rapid re-employment. A 122 Report may be submitted for a "single" job retained at an existing employer and/or a single rapid re-employment with a different employer. It is important that Local Area staff consider and document how layoff aversion activities will result in a positive outcome before allocating resources. Note – this is a cumulative report. It is not a register of local activities. It is to be used to report only business solutions (incumbent worker training to prevent a layoff, Work Sharing or Talent Transfer) completed during the reporting quarter.

For completion of the business solution strategy, documentation of outcomes must be attached to the 122 Report and retained locally for audit purposes. Note – the Local Board's administrative, fiscal, and program activities will be subject to the state's monitoring.

The 122 Report and line item instructions are included as Attachments 4 and 5. The 122 Report must be completed quarterly; it is a cumulative report and submitted via email by the 20th of the month following the quarter's end to the Local Area's assigned Regional Advisor, with a "cc" to the Local Area administrator. The reporting period is from April 1 to March 31 of the following year.

ACTION

Bring this directive to the attention of all relevant parties.

INQUIRIES

If you have questions, please contact your [Regional Advisor](#) at 916-654-7799.

/s/ JOSÉ LUIS MÁRQUEZ, Chief
Central Office Workforce Services Division

Attachments are available on the internet:

1. [Required, Allowable and Prohibited Rapid Response Activities](#)
2. [Rapid Response 121 Report](#)
3. [Rapid Response 121 Report Line Item Instructions](#)
4. [Layoff Aversion 122 Activity Report](#)
5. [Layoff Aversion 122 Activity Report Line Item Instructions](#)
6. [Summary of Comments](#)
7. [Errata Chronology](#)