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To: WIOA Subrecipients of the Orange County
Development Area

From: Brian Rayburn 
Interim Community Investment Division Administrator/
Interim OC Development Board Executive Director

Subject: Rapid Response and Layoff Aversion Activities
Information Notice 17-OCDB-10
Supersedes Information Notice 14-OCWDA-04

PURPOSE:

To provide guidance on rapid response and layoff aversion activities based on the State Directive WSD16-04, Rapid Response and Layoff Aversion Activities, which articulates the role of layoff aversion within effective Rapid Response systems. This policy also establishes local policy on the collection and reporting by Orange County Development Board (OCDB) subrecipients of the required Rapid Response and Layoff Aversion activities.

This policy supersedes Information Notice 14-OCWDA-04 dated December 15, 2014.

EFFECTIVE DATE:

This notice is effective on the date of issuance.

REFERENCES:

WIOA (Public Law 113-128), Section 3(15) and (51), 107(d)(4), and 134(a)(2)(A)
Title 20 Code of Federal Regulations (CFR), Subpart C-Rapid Response Activities, Section 682.300-370
EDD State Directive WSD16-04, Rapid Response and Layoff Aversion Activities

BACKGROUND:

- a. The State directive WSD16-04 states that California's Rapid Response system has evolved since the implementation of WIA, with Local Boards leading innovative and proactive local Rapid Response systems. It also emphasizes the Workforce Innovation Opportunity Act (WIOA) requirement that states and Local Areas include Layoff Aversion activities as an integral component of Rapid Response.

The State's response to this evolution was the establishment of 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 (Talent Transfer).

- b. WSD16-04 provides the following state guidance to the Local Areas on Rapid Response and the role of Layoff Aversion:

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

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.

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.

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.

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 (IWT) – 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 PROCEDURE:

1. OCDB subrecipients shall observe the state guidance on rapid response and the role of layoff aversion provided in WSD16-04 (and as reiterated in the Background of this policy).

2. Use of Rapid Response Funds

Table I below lists the required and allowable uses of Rapid Response funds. Layoff aversion activities are required activity in WIOA. OCDB abides by the state’s policy that the full scope of required Rapid Response activities, as described in the WIOA, must be provided in the 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. Subrecipients are encouraged to leverage other funding sources (local or state) 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.

ACTIVITY	REQUIRED	ALLOWABLE	PROHIBITED
Conducting planning meeting with employer	X		
Assessing layoff aversion potential	X		
Conducting orientation meeting with employees	X		
Providing TAA orientation	X		
Delivering/mailling Rapid Response informational materials	X		
Providing access to CalJOBS SM and SkillsMatch on-site, using company’s or mobile facility	X		
Enabling participants to register with America’s Job Center of California SM onsite	X		
Job fair or information expo focused on one or more dislocation events, at or not at the dislocation site	X		
Coordinating Labor-Management/Workforce Transition Committee	X		
Providing information about services available in the AJCCs and setting up systems to provide on-site access to information and services	X		
Providing training orientation on industry specific opportunities (ex: Biotech)	X		
Providing resources for food, shelter, clothing and other emergency assistance	X		
Conducting Business Engagement Activities	X		
Conducting Research on Business Activities	X		
Devising layoff aversion strategies with employer	X		
Providing layoff aversion technical assistance to employer	X		
Conducting business services workshops	X		
Training affected workers to upgrade skills for another position in company	X		
Attending Regional Roundtable		X	
Attending conferences		X	

ACTIVITY	REQUIRED	ALLOWABLE	PROHIBITED
Conducting interview technique workshops		X*	
Conducting job search assistance and resume writing workshops		X*	
Completing Unemployment Insurance applications			X
Job fair or information expo not related to a dislocation event			X

*Local Workforce Development Areas may conduct group workshop (e.g. job search assistance and/or resume writing workshops) as part of an on-site Rapid Response to business closures or significant layoffs with written approval from OCDB, if EDD workforce services staff are not available to conduct such workshops.

3. OCDB Subrecipients will use the following guidelines when conducting and reporting Rapid Response and Layoff Aversion activities in the Orange County Development Area.

a. *Rapid Response*

i. Rapid Response Employer Contact (in response to layoff or closures)

- Notice of layoffs or closures include, but are not limited to: Worker Adjustment and Retraining Notification (WARN), Letter of Intent (LOI), media announcement/news releases, and affected employees.
- OCDB Subrecipients must contact employer representatives of the affected workers within two business days of receiving a WARN notice.
- The initial contact shall serve to assess the needs of the employer and the affected employees, which leads to the planning of services.
- The planning meeting or visit may be conducted in person, by telephone or through the use of other interactive technology, and will focus on available services and information that will be provided during the onsite orientation(s).
- Rapid Response orientations and activities shall be coordinated by OCDB subrecipients and shall include information and access to unemployment compensation benefits and programs, comprehensive One-Stop System services, and employment and training activities, including information on the Trade Adjustment Assistance TAA program, and other resources.

ii. Rapid Response and Reporting Requirements

- The OCDB Rapid Response Required Activities Form 121 shall be completed by subrecipients to report employer contact activities and their outcomes in response to layoffs or closures, as defined by the State Board.
- Subrecipients shall complete the OCDB Rapid Response Required Activities Form 121 following the line item instructions in Attachment III.
- The OCDB Rapid Response Required Activities Form 121 shall be completed if multiple sessions are conducted on the same day for a single employer with a note of how many multiple orientations were made that day.
- Complete a separate OCDB Rapid Response Required Activities Form 121 for each employer contact occurring on different days, locations, or employers.
- Initial contact meeting's related to the issuance of a WARN, that do not result in a planning meeting to coordinate future onsite orientation(s), are required

- to report these meeting purpose as informational from the drop down menu and shall provide a brief explanation for why the employer declined services.
- If a planning meeting and orientation co-occur on the same day, report that the purpose of the visit was the planning meeting (Plan).
 - If multiple local areas participate in a joint meeting, the OCDB subrecipients and the local area must agree on the division of the affected workers to report on the Rapid Response Required Activities Form 121 form. The aggregate shall not exceed that the total number of affected workers for the event as provided in WSD16-04 (*Rapid Response 121 Report line item instructions - total number of affected employees.*)
 - Job fairs should not be recorded under these activities *unless* they are conducted as part of the on-site response to a significant dislocation.

The OCDB Rapid Response Required Activities Form 121 and line item instructions are included as Attachment I and II of this policy. OCDB subrecipients shall provide, by the seventh (7th) calendar day of each month a Rapid Response Activity tracking report for the preceding months activities, in a format approved by OCDB.

b. Layoff Aversion

i. Layoff Aversion Employer Contact

OCDB Subrecipient shall contact employers who maybe at-risk of layoffs or closures through a series of activities, studies, and networks to examine a business' or sector's cycle, organizational condition, markets, and broad community relationships, in an effort to determine workforce and economic solutions that can mitigate job loss or save jobs.

20 CFR §682.320(a) provides that layoff aversion consists of strategies and activities, including those in sections §682.320(b), §682.330 and §682.340, to prevent or minimize the duration of unemployment resulting from layoffs.

- Providing assistance to employers in managing reduction in force, which may include early identification of firms at risk of layoff, assessment of the needs of and options for at-risk firms, and delivery of services to address these needs;
- Ongoing engagement, partnership, and relationship-building activities with businesses in the community
- Funding feasibility studies to determine if company's operations may be sustained through a buyout or other means to avoid or minimize layoffs;
- Developing, funding, and managing incumbent worker training programs or other worker upskilling approaches;
- Connecting companies to short-time compensation or other programs available under Unemployment Insurance programs;
- Establishing linkages with economic development activities at the Federal, State, and local levels

- Partnering or contracting with business-focused organizations to assess risks to companies and propose strategies to address those risks
- Conducting analysis of the suppliers of an affected company to assess their risks and vulnerability to a potential closing or shift in production
- Engaging in proactive measures to identify opportunities for potential economic transitions
- Connecting businesses and workers to short-term, on-the-job, or customized training programs and registered apprenticeships before or after layoffs

Contact with employers may be conducted on-site, by telephone, or the use of any interactive technology and shall take place prior to notice of layoffs. Subrecipients shall coordinate with One-Stop system partners to identify the needs of businesses and help identify and design appropriate layoff interventions.

ii. Layoff Aversion and Reporting Requirements

- The OCDB Layoff Aversion Form 122 shall be completed by subrecipients to report the development, implementation and completion of business solution strategies to prevent layoff (e.g. IWT, Work Sharing, Talent Transfer, etc.) delivered to businesses during any stage of the business cycle that relate to and result in job retention and /or rapid re-employment.
- OCDB subrecipients shall complete the OCDB Layoff Aversion Form 122 following the line item instructions in Attachment IV.
- Supporting documentation of outcomes are required to be attached to each OCDB Layoff Aversion Form 122:
 - Letter from the business affirming that the layoff aversion activity coordinated or provided resulted in jobs saved/retained
 - Written letter job offer from the hiring employer
- The OCDB Layoff Aversion Form 122 may be submitted for a “single” job retained at an existing employer and/or a single rapid re-employment with a different employer.

The OCDB Layoff Aversion Activities Form 122 and line item instructions are included as Attachment III and IV of this policy. OCDB subrecipients shall provide, by the seventh (7th) calendar day of each month a Layoff Aversion Activity tracking report for the preceding months activities, in a format approved by OCDB.

4. The EDDs WSIN15-21 communicated to the local workforce system the availability of a new module for CalJOBS, the Customer Relationship Management Module (CRM). The CRM meets the business needs of managing, recording, and conducting all business engagement activities. Subrecipients and their staff responsible for business outreach activities are *strongly encouraged* to use this module to track all business engagement activities. It states that the 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.

5. Case files are maintained by the subrecipient to document Rapid Response and Layoff Aversion Activities provided to employers and affected employees. These files must be kept in a centralized location and available to staff providing Rapid Response and Layoff Aversion services to employers. Please note that activities and documentation of outcomes are subject to local and state monitoring processes.

Case files shall include documentation of the services reported on the OCDB Rapid Response Required Activities Form 121 or OCDB Layoff Aversion Form 122.

Documentation may include but is not limited to:

- Company information
- Notice of layoffs/closures or determination of need
- California Worker Adjustment and Retraining Notification (WARN) Act notices
- All source documents needed for validation of reported dates, meeting attendees, or members of the business engagement team
- Initial and/or comprehensive assessments
- Written business solution strategy, identified to either assist affected employees or to prevent layoff, including all updates of services provided and completed
- Written approval from OCDB to conduct group workshop (e.g. job search assistance and/or resume writing workshops)
- Rapid Response Surveys completed by affected employees
- Contracts with employers for customized training, incumbent worker training, and work sharing strategies which shall include:
 - number of employees participating in the training
 - wage and benefit levels of those employees (both pre and post participation earnings)
 - list other training and advancement opportunities provided by the employer
 - breakdown of employer share in the cost (cash or in-kind)
- Training progress reports, timesheets, and attendance reports
- Invoices which may include the employer in-kind such as the wages paid to participants, while in training and shall include paystubs, timesheets, and certificates
- Letter from the business affirming that the layoff aversion activity coordinated or provided resulted in jobs saved/retained
- Completed resume for clients being referred for Talent Transfer
- Talent Transfer hires confirmed by the hiring employer through a written job offer that includes start date.
- Printed case management notes showing provision of all substantial services provided and coordination between team members and partners

ACTION:

Bring this policy and procedure to the attention of all staff.

INQUIRIES:

If you have any questions regarding this policy, please contact your Contract Administrator at 714-480-6500.

ATTACHMENTS:

Attachment I: OCDB Rapid Response Required Activities Form 121

Attachment II: Rapid Response Form 121 Line Item Instructions

Attachment III: OCDB Layoff Aversion Form 122

Attachment IV: Layoff Aversion Form 122 Line Item Instructions

