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STATE WIA INSTRUCTION NUMBER: 08-02

TO: Upstate WIA Staff

SUBJECT: Pre-Award Criteria-Business Relocation/ Expansion  
(120 Day Rule)

ISSUANCE DATE: July 15, 2008

EFFECTIVE DATE: Immediately

**PURPOSE:** To standardize pre-award review criteria to be completed and documented jointly by local areas and relocating/ expanding businesses as a prerequisite to Workforce Investment Act (WIA) assistance.

**REFERENCES:** Section 181(d) of the Workforce Investment Act of 1998 and 20 CFR Part 667.268, WIA Final Rules.

**BACKGROUND:** WIA Title 1 funds may not be used to encourage or induce 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/her job at the original location. If a business relocation has resulted in any employee losing his or her job at the original location in the United States, no WIA funds may be used for customized training, skill training, on-the-job training, incumbent worker training or company specific assessments of job applicants or employees until the company has commercially operated at a new location for 120 days. Local areas have incorporated these restrictions into their practices; this instruction codifies those practices.

For the purpose of this instruction, the following definitions are provided:

- A relocating business is a company that moves operations from a facility in one labor market area within the United States and its territories to new or expanding facility in another labor market area.
- A labor market area in a geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.
- Loss of employment occurs when a person no longer has a job at the original location because of the relocation. This does not include those who were fired for cause.



- The term 'commercial operation' is intended to distinguish between the planning/construction and the operational phases of business. For example, the 120-day count would start on the day that the company begins manufacture of a product, not on the day construction begins.

**INSTRUCTION:** In order to verify that a new or expanding business is not relocating employment from one area to another area, the local workforce investment area (LWIA), or its designee, and the new or expanding business must jointly complete and document a standardized pre-award review. This pre-award review is a prerequisite to the business, receipt of any WIA-funded services. As a result of the review, if it is determined that relocation from one labor market area within the United States (U.S.) and its territories to another labor market has occurred, the following criteria must be met:

1. The relocation did not result in any employee losing his/her job at the original location; or
2. If the relocation did result in any employee losing his/ her job at the original location, the business has been in operation (e.g., in production or providing services) in the new location for a minimum of 120 days.

A pre-award review must document the following:

1. Name(s) under which the company conducts business (including predecessors and successors in interest).
2. The name, title, and address of the company official certifying the information.
3. A certification that the new or expanding business is not relocating that business or part of the business and displacing workers.

If the business or part of the business is relocating, the business must provide the following:

1. A statement from a company official about job losses at the former location.
2. A certification by a company official stating whether or not WARN notices have been filed.

Local Workforce Area (LWIA) staff may use the attached standardized two section pre-award review form for documenting reviews. The business' designated official should complete and sign Section II, document the outcomes, and sign.



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Comparable locally developed procedures and forms may be used providing they address, at a minimum, the issues and information covered in this instruction and on the attached form.

**ACTION:** This information and the related requirements must be communicated to staff responsible for reviewing and negotiating on-the-job, customized, skill, or incumbent worker training agreements, as well as to staff conducting company specific assessments of business positions, job applicants or employees.

**INQUIRY:** Questions may be directed to Ms. Ann Fesperman at (864) 596-2028 or [fesperman@upstatewib.org](mailto:fesperman@upstatewib.org)

A handwritten signature in cursive script that reads "Ann Fesperman". The signature is written in black ink and is positioned above a horizontal line.

Ann Fesperman

Executive Director Upstate Workforce Investment Board

Attachment:  
Pre-award Review Template

**(LWIA) Pre-Award Review  
Section 1**

Your company has requested Workforce Investment Act Funding from the (LWIA). Due to federal regulations regarding the use of these funds, (the LWIA) must conduct a pre-award review to determine whether or not opening or expanding your business has resulted in or will result in displacement of workers in another geographic area.

Please complete the following questions and sign below.

1. Name(s) under which the establishment conducts business (including predecessors and successors in interest): \_\_\_\_\_  
\_\_\_\_\_
2. Date the company / location will expand or begin operation: \_\_\_\_\_
3. Name, title, address, and phone number of the company official providing this information:  
Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_
4. Name and address of any facility in another geographic location that is being closed or downsized, or from which business is being transferred:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

**I hereby certify that the information I have provided is true and accurate to the best of my knowledge. I have not provided intentionally false or misleading information or willfully omitted pertinent information.**

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

**(LWIA) Pre-Award Review  
Section II**

*No funds provided under the Workforce Investment Act (WIA) shall be used or proposed to be used for the encouragement or inducement of a business or a 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 (20 CFR 667.268).*

Section II of the review must be completed and documented by the Local Workforce Investment Area, or its designee, as a prerequisite to the business receiving WIA Title 1 Assistance.

1. What type of WIA assistance is the business requesting? \_\_\_\_\_  
\_\_\_\_\_
2. Were there job losses at the former location(s)? \_\_\_\_\_
3. Is the business seeking WIA assistance in connection with past or impending job losses at other facilities? (For example, will the WIA assistance be used to train people for jobs that are the same as or similar to the jobs lost? If so, please explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Has a company official completed and signed Section 1 of the Pre-Award Review? \_\_\_\_\_
5. Did you review the WARN notices relating to this employer? List the dates of submission. \_\_\_\_\_

I hereby certify that the information given as part of and/or attached to Section II of this Pre-Award Review is true and accurate to the best of my knowledge. Based on this information and staff review of the employer information provided in Section 1:

- Yes, the business is eligible to receive WIA-funded assistance at this time under the provisions of the Workforce Investment Act and 20 CFR 667.268
- No, the business will not be eligible to receive WIA-funded assistance until after 120 days from the start of operations (date) \_\_\_\_\_

\_\_\_\_\_  
(LWIA) Representative

\_\_\_\_\_  
Signature of (LWIA) Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date