

DATE: December 24, 1991.

SESA ISSUANCE NO.: 92-27

SUBJECT: Trade Adjustment Assistance (TAA) for Workers

Program--Questions and Answers

1. Purpose. To provide responses to inquiries received from State Employment Security Agencies (SESAs) on a number of program and policy issues in administering the TAA Program.

2. Background. Several SESAs have recently asked for program clarification and guidance on a number of issues arising from the implementation of the amendments of the Trade Act of 1974 in the Omnibus Trade and Competitiveness Act of 1988 and other program matters. This letter consolidates the questions and responses for use in administering the TAA Program.

3. Questions and Responses.

a. Is there a training expenditure limit? If so, what is the training expenditure limit (public, private)?

Response: There is no fixed limit. However, when reviewing training applications, they should be reviewed against the six (6) criteria for approval as contained in General Administration Letter No. 15-90. Staff should appropriately apply all six (6) criteria including the reasonableness of cost criterion. Among other things, this criterion requires States to establish annually a maximum amount allowable for the total costs of training per worker. Such total costs include all direct costs (tuition) of training for the full duration of the individual's training program, any allowable books, tools and fees, and, where payable, transportation or subsistence costs.

b. Are there items which are not reasonable or allowable (computers, typewriters, sewing machines, and other equipment)?

Response: Yes. Items such as those identified above are examples of items that would not be allowable under the Act. However, other items (for example, tools, books, and similar items) may be allowable depending on the circumstances. Generally, the costs must be reasonable and all students attending the training must uniformly be required to pay such costs or obtain such equipment regardless of the source of the funds to cover such costs (i.e. TAA funds, State funds, private resources). Additionally, the items must be required for the training, not for any subsequent licensing, registration or other purposes related to actually engaging in an occupation.

c. Is there an expiration to TAA entitlements?

Response: Yes. Activities such as job searches and job relocations are examples of entitlements that have specific time limitations. In the case of a worker's eligibility to receive training, there is no time limitation. However, there is a time limitation of 210 days for the worker to file a "bona

fide" written application for training in order to be eligible for Additional Trade Readjustment Allowance payments. See 20 CFR 617.3(i) for the definition of a bona fide application for training.

d. Are there limits to the level of training the programs can provide (associate, baccalaureate, master, or other degrees)?

Response: There are no limits to the level of training except that it cannot extend beyond 104 weeks, and it must meet the six (6) criteria for approval.

e. When the client feels training is not appropriate because of skills he/she already possesses, how long should he/she be given waivers while trying to secure employment?

Response: The appropriateness of training based on an applicant's skill level is not a decision to be made by the applicant. This decision rests solely with the agency administering the program. Good judgment should be exercised when considering this condition and should be reviewed judiciously under the 30-day waiver review requirements when waivers are issued.

f. While most students can enter training immediately upon receiving approval, many schools cannot process the required paperwork fast enough. Are waivers appropriate to ensure continued program services while the necessary forms are processed?

Response: Yes. Waivers are appropriate when an applicant will be starting training more than 30 days from the application date. (Note that, generally, a worker must commence approve training within 60 days of the approval date. See 20 CFR 617.22(b)). An applicant is considered to be enrolled in training and no waiver is necessary if the training program starts within 30 days.

g. Recently, there have been several dislocated workers who are highly skilled and very educated. Because there is little we can do to train these individuals, would it be appropriate to issue waivers to these individuals while they look for employment? For how long?

Response: When issuing waivers, the State must consider all information on a case-by-case basis. As training is an entitlement and a requirement, States should only issue waivers after careful consideration of all the facts. In addition, once the State does issue a waiver, each case should be carefully reviewed every 30 days (requirement) to determine if the waiver should be left in effect or revoked.

h. Previous interpretations were that in no instance could participants receive waivers once training had begun. However, recently there have been more requests for waivers subsequent to the beginning of training. Are waivers appropriate between semesters, when changing curricula, in emergencies, or in similar circumstances? How should the "justifiable cause" provision related to failure to begin participation in training or ceasing participation in training be applied?

Response: Waivers are not appropriate in the circumstances described above. The requirements governing breaks in training are found in General Administration Letter No. 15-90. The GAL provides for payment of TRA if a break in training does not exceed 14 days. Further, the break must be provided for in the published schedule of the training program, and the worker must have been participating in the training program before the beginning of the break. The breaks in training provision is an exception to the requirement that a worker be participating in training (or have received a waiver of the training requirement) in order to be eligible to receive a TRA payment for that week.

Unscheduled breaks in training are not an acceptable reason to issue a waiver of the training requirement. Section C.2. of Attachment A to GAL 15-90 sets forth conditions for deciding whether an individual failed to begin participation in training or ceased participation in training, without justifiable cause. The justifiable cause language is intended to cover unforeseen contingencies such as weather, natural disaster, accidents or health problems, etc., and is assumed to cover temporary conditions where the worker has not actually ceased to participate in the sense of quitting the program. Circumstances such as a school dropping courses or changing curricula are not reasons to invoke the justifiable cause criteria.

In unforeseen emergency or contingency cases, and applying the reasonable individual test, it would be appropriate to invoke the justifiable cause criteria and to continue payment of TRA during the period that an individual is not attending class. Issuance of a waiver is not appropriate in justifiable cause circumstances since the issuance of a waiver is solely to be used if a decision is made that training is not feasible or appropriate for the individual assessed under the six criteria for training.

When the individual is not participating in training for justifiable cause, an assessment should be made as to whether the cessation of training is likely to be for a short or protracted period and why. The assessment should determine when the individual can resume training or if other training arrangements

are deemed appropriate, and the individual should be reassessed under the six criteria for approval of training. When an individual ceases to participate in training for any reason other than justifiable cause, TRA payments cease until the individual resumes training. If that individual ceases to participate in approved training before his or her potential TRA eligibility is exhausted, that person in order to resume training must be reassessed and the six criteria for training applied to determine if other training is feasible and appropriate. If other training is neither feasible nor appropriate, a training waiver should be granted to the individual. The training waiver provision, however, does not apply to workers who are receiving additional TRA. These workers must be participating in training to receive additional weeks of TRA benefits.

Section E.3. of Attachment A to GAL 15- 90 provides complete details for counting the 14-day breaks including the exclusion of certain weekends and holidays when training normally would not be scheduled. Also, Section 3 of Attachment B to GAL 15-90 provides three examples of payment of TRA during breaks in training.

4. Action Requested. SESA Administrators are requested to provide this issuance to appropriate staff, including TAA and TRA Coordinators.

5. Inquiries. Direct questions to Walter Baran on 617-565-2219 or Kerin Chamberlain on 617-565-4527.

Robert J. Semler

Regional Administrator