

MassWorkforce Issuance

Workforce Issuance No. 11-30

☒ **Policy** ☐ **Information**

To: Chief Elected Officials
Workforce Investment Board Chairs
Workforce Investment Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Regional Managers

cc: WIA State Partners

From: George Moriarty, Director
Department of Career Services

Date: April 25, 2011

Subject: **On-The-Job Training (OJT) Under the Trade Adjustment Assistance (TAA) Programs, Revised**

Purpose: To provide revised policy guidance to Local Workforce Investment Boards, One-Stop Career Center Operators and local workforce investment partners with respect to on-the-job training eligibility and enrollment requirements/timeframes under the Trade Adjustment Assistance (TAA) Programs. This guidance covers program changes resulting from the enactment of The Trade and Globalization Adjustment Assistance Act of 2009 and replaces Corporation for Business, Work and Learning (now Commonwealth Corporation) Policy No. 00-07, On-the-Job Training Under the Trade Adjustment Assistance Program (12/10/99).

Background: On February 17, 2009 the American Recovery and Reinvestment Act (ARRA) of 2009 was signed into law. The Trade and Globalization Adjustment Assistance Act of 2009, part of the ARRA, amended several elements of the TAA program. One of the changes includes the reinstatement of the requirement for the OJT to reasonably lead to employment with the OJT employer. This policy provides notice of the revised guidelines for OJT eligibility, changes to the length of OJT contracts allowed as well as other important changes regarding OJT under the TAA program.

Policy:

On-the-Job Training (OJT) is a method of training to be made available to eligible TAA workers. For any individual determined to be TAA eligible and in need of training, six (6) criteria must be met prior to any training approval:

1. There is no suitable employment (which may include technical and professional employment) available for the adversely affected worker. Suitable employment is defined in the TAA regulations at 20 CFR §617.22 as work of an equal or higher skill level and with a wage of at least 80% of the worker's prior average weekly wage;
2. The worker would benefit from appropriate training;
3. There is a reasonable expectation of employment following completion of such training;
4. Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources;
5. The worker is qualified to undertake and complete such training; and
6. Such training is suitable for the worker and available at a reasonable cost.

With regard to OJT for TAA eligible workers, §236(c) of the Trade Act imposes the following requirements which must be met if OJT is to be approved:

1. No currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits);
2. Such training does not impair existing contracts for services or collective bargaining agreements;
3. In the case of training that would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained;
4. No other individual is on layoff from the same, or any other substantially equivalent job, for which such adversely affected worker is being trained;
5. The employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created by hiring such adversely affected TAA eligible worker;
6. The job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals; and
7. Such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to Section 222 {of the Act}.

OJT training undertaken on behalf of a TAA eligible worker must also comply, unless otherwise specified herein, with all requirements of the Commonwealth's general OJT policy as described in MassWorkforce Issuance No. 11-28, including:

1. The OJT can reasonably be expected to lead to suitable employment *with the employer offering the on-the-job-training*. There does not need to be a guarantee of employment.
2. The OJT is compatible with the skills of the worker.

3. The OJT includes a curriculum through which the worker will gain the specific knowledge or skills to become proficient in the job for which the worker is being trained.
4. The participant's knowledge/skill gain through OJT must be measurable through submission by the employer of monthly progress reports.
5. The prospective OJT employer has not exhibited a pattern of failing to provide prior OJT trainees with continued, long-term employment as regular employees.
6. The prospective OJT employer has not exhibited a pattern of providing wages, benefits and working conditions to prior OJT trainees that are not equivalent to the wages, benefits and working conditions provided to regular employees who have worked a similar period of time and are doing the same type of work.
7. The employer must be compliant with all tax requirements and must provide a Certificate of Good Standing and Tax Compliance from the MA Department of Revenue that has been issued within 6 months prior to the start date of training. A current certificate will be attached to the TAA OJT Contract Request package.
8. A proposed OJT employer must be in good standing with regard to Department of Unemployment Assistance (DUA) requirements. The MA Trade Unit will request a report of "good standing" directly from DUA for each proposed OJT employer.
9. The employer must not be debarred/suspended from doing business with either the Federal Government or the Commonwealth of Massachusetts.
10. OJT reimbursement to the employer will be made on the basis of 50% of the total wages paid to the TAA OJT trainee during the invoiced training period.
11. Development and administration of an OJT position for a TAA eligible worker must utilize the forms specified in this policy.

Training undertaken in accordance with this policy must also comply with requirements described in MassWorkforce Policy Issuance No. 11-29, Training Under the Trade Adjustment Assistance (TAA) Programs, Revised unless otherwise stipulated herein.

Additional procedural detail is described in Attachment A.

Action

Required: Please assure that all appropriate staff persons are knowledgeable of the content of this Policy Issuance and that they carry out related TAA activity in a compliant manner.

Effective: Immediately

References:

- Trade Adjustment Assistance Act of 1974, as amended
- Trade Reform Act of 2002
- The Trade and Globalization Adjustment Assistance Act of 2009
- Trade Regulations, 20 CFR Part 617

- TEGL No. 11-02, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, issued 10/10/ 2002 and subsequent changes
- TEGL No. 22-08, Operating Instructions For Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, issued 5/15/2009 and subsequent changes
- TEGL No.4-10, On-the-Job Training National Emergency Grants (OJT NEG)s Funded with American Recovery and Reinvestment Act of 2009 Resources

Inquiries: Please email all questions to PolicyQA@detma.org. Also, indicate Issuance number and description.

Attachments: Attachment A - TAA OJT Procedural Considerations

Attachments B1-B6 - Forms to complete the TAA OJT Contract Request Package

- B-1 Pre-Award Review for Trade On-The-Job Training
- B-2 Trade Program On-The-Job Training Contract
- B-3 TAA OJT Training Outline
- B-4 TAA OJT Tools and/or Equipment Condition of Training Agreement
- B-5 TAA OJT Employer Compliance Declaration
- B-6 TAA OJT Modification of Contract Terms

Attachment C - TAA OJT Monthly Progress Report

Attachment D - TAA OJT Employer Invoice

Attachment E - Sample Certificate in Good Standing and Tax Compliance