

Mass Workforce Issuance

Workforce Issuance No. 06-45

☒ **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 Associate Directors
DCS Field Managers

cc: WIA State Partners

From: Susan V. Lawler, Director
Division of Career Services

Date: July 25, 2006

Subject: Serving Participants under the Trade Adjustment Act Program

Purpose: To provide clarification to Local Workforce Investment Boards, One-Stop Career Center Operators and other local workforce development partners with respect to the U.S. Department of Labor's (USDOL) current policy related to serving NAFTA-TAA Program (henceforth referred to as the Trade programs) participants including those with limited English proficiency.

Background: At the national level, issues have arisen with respect to how thoroughly Trade eligible workers have been informed by career center system staff of the goals and requirements of the Trade programs, particularly with respect to training services. Workers must fully understand the service choices available to them so that they may make informed decisions with regard to the specific mix of Trade Program services that will most appropriately enable them to attain their specific reemployment goals. USDOL has also expressed concerns that in some cases, workforce system staff may not fully understand its policy with respect to training and basic remedial education services as they apply to Trade eligible workers, particularly with respect to workers who possess limited English proficiency and who are in need of and seeking English language training in conjunction with their overall Trade service plan.

In response to these issues and concerns, USDOL has issued Training and Employment Guidance Letter (TEGL) No. 13-05 (2/2/06) Serving Participants Under the Trade Adjustment assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA) Programs (Attachment A).

TEGL 13-05 reiterates USDOL's Trade Program policies with regard to:

- Training Goals,
- Training Completeness,
- On-The-Job Training,
- Informed Choice, and
- Training Program Development

Summary of USDOL Policy Clarifications

Training

Training services may only be approved for Trade eligible workers for whom no suitable employment is available within the individual's regular commuting area or in an area to which the individual desires to relocate with the assistance of a relocation allowance, and there is no reasonable prospect of such suitable employment becoming available to the individual in the foreseeable future.

Suitable work means work of a substantially equal or higher skill level than the individual's past adversely affected employment, and wages for such work at not less than 80% of the person's average weekly wage.

Training Goal

The *goal* of the Trade Programs is to return workers to suitable employment as defined above. To achieve this goal, service providers must make every effort to provide an appropriate combination of reemployment services, training and job search and relocation allowances where there are suitable employment opportunities that are feasible and appropriate for the worker to pursue. These efforts *must* include appropriate training, if needed and case management of workers. The Trade Act does not, however, *guarantee* attainment of "suitable employment" at a salary/wage of at least 80% of the participants' previous pay level as the eventual outcome for *each Trade eligible worker* who receives services (including training services) under the program. There must only be a *reasonable expectation of employment* following training and the training must benefit the worker.

None of the 6 training approval criteria limits the approval of training to training programs that result only in suitable employment. Such a requirement would have the effect of requiring a denial of training where a worker could not reasonably be assured of an offer of a job providing 80% wage replacement upon completion of the training. Further, it is not always *feasible* to train workers for suitable employment. For example, the training that a particular participant might need in order to meet the expectation of suitable employment may require more education or experience than the Trade Programs allow. Therefore, USDOL recognizes "suitable employment" *as a goal and not a requirement* for approval of training.

Additionally, as long as the approved training meets all the requirements of the Trade Act and associated regulations, including the requirement that training be available at a reasonable cost, a worker has a right to choose to enroll in a higher cost program for an occupation that is more likely to meet the wage replacement

goal of the Trade Act even when lower cost training in another occupation that does not meet this goal is available to the worker.

NOTE: This does not negate the requirements to compare at least 2 vendors and to provide justification based on *QUALITY*, *CONTENT* and *RESULTS* for not choosing the lowest cost vendor available within the commuting area being justified.

Training Completeness

Training under the Trade Programs may only be approved if it results in the customer being “job ready”. Therefore, to be approved, a training program must provide skills necessary to return the participant to employment.

In cases of Trade eligible customers with Limited English proficiency, “job readiness” may be achieved through,

1. Contextualized training with *simultaneous* occupational skills and remedial education (basic skills and/or English language skills) in an integrated curriculum.
2. A *sequential* combination of remedial and occupational skills
3. In rare instances, through a stand-alone remedial education program if the individual possesses marketable occupational skills and only needs Basic and/or English language skills to gain employment [as long as the remedial course meets all approval criteria under §617.22(a)]. Ordinarily, remedial education is made part of a broader program as defined in 617.22(f)(3).

On-the-Job Training

TAA Regulations at §617.23(c)(1), require that priority be given to On-the-Job Training (OJT) as a means of providing needed training services to Trade eligible workers. Reasonable actions should be taken to develop OJT opportunities for trade-affected workers by promoting the benefits of OJTs under the Trade Programs among local employers and to present OJT as a *first* option (if available) to Trade eligible customers.

Informed Choice

Trade service providers *must* communicate information at a sufficient level to enable Trade eligible customers to make an informed choice among approvable training options, regardless of the workers’ language or educational abilities. Informed choice must be based on a completed assessment of pre-training skills, the results of which are recorded in each customer’s case file.

For those with limited English proficiency, careful case management at the training selection and approval stages, and during training are essential to achieving a successful training outcome.

Training Program Development

Approved TAA training must be reasonably available from governmental agencies, education providers or private training providers. It is not an appropriate use of Trade Act funds, training or administrative, to pay for the development of a training provider program, curriculum development, teacher training or physical plant needs. A training provider can recoup such costs as part of a reasonable tuition payment.

Policy: In accordance with the federal policy clarifications described above, Local Workforce Investment Boards and One-Stop Career Center Operators:

1. Must assure that all Trade eligible workers are fully informed of the 80% wage replacement goal and are provided general information about available training programs, including access to labor market information, wage replacement information and web-sites which may inform participants of the types of training available. Case files *must* contain sufficient documentation to demonstrate that all these requirements have been satisfied.

To facilitate compliance with the federal policy requirements regarding notification to Trade eligible customers, One-Stop Career Center Operators must incorporate the use of the attached Notification of Rights and Promise of Compliance for the Trade Programs form (Attachment B) in servicing all Trade eligible workers. A Notification form must be signed by *each* Trade eligible customer *and* his/her counselor/case manager upon completion of the initial meeting with the Trade eligible customer. A copy of the signed Notification must be retained in the customer's case file at the Career Center

2. To assure that an approved training program will result in a trade eligible customer being "job ready" upon completion of the program, each trade customer's case file must identify the occupation for which the worker is being trained.

Action

Required: Please distribute copies of this policy and the attachment to all appropriate individuals in your organization, and take necessary action to ensure compliance with this policy.

Effective: Immediately.

References: Trade Act of 1974, as amended, Trade Reform Act of 2002, GAL 15-90 and changes, Amendments to the Trade Adjustment Assistance Program, Including Significant Changes affecting Basic and Additional TRA entitlement, dated August 21, 1990, TEGL 11-02 and changes, TEGL 26-02 and TEGL 13-05 issued February 2, 2006.

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