

MASSACHUSETTS WORKFORCE DEVELOPMENT SYSTEM

Mass Workforce Issuance

100 DCS 13.107

☒ Policy ☐ Information

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

cc: WIOA State Partners

From: Alice Sweeney, Director
Department of Career Services

Date: January 25, 2017

Subject: Training Under the Trade Adjustment Assistance (TAA) Programs

Purpose: To notify Local Workforce Development Boards, One-Stop Career Center Operators and local workforce partners of training eligibility and enrollment requirements/timeframes in order to establish and maintain eligibility to receive Trade Readjustment Assistance (TRA) benefits.

Background: The Trade Adjustment Assistance Program for workers was first established by the Trade Act of 1974 and has been amended numerous times. It was first amended by the TAA Reform Act of 2002; then by the Trade and Globalization Adjustment Assistance Act of 2009 and further amended by the Trade Adjustment Assistance Extension Act of 2011. On January 1, 2014 the Sunset Provisions of the Trade Adjustment Assistance Extension Act of 2011 program became effective and are referred to as “Reversion 2014”. The Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015) was signed into law by President Barack Obama on June 29, 2015. TAARA 2015 repeals the Sunset Provisions of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), under which the Reversion 2014 Program was in effect since January 1, 2014. This policy is being amended to ensure alliance, where allowable and applicable, with the enactment of the Workforce Innovation and Opportunity Act (WIOA).

Policy: This policy provides notice of the current deadlines for TRA eligibility (dependent upon petition date), duration of training allowed as well as other training criteria under the TAA program.

For any individual determined to be TAA eligible and in need of training, six (6) criteria must be met prior to training approval. The six criteria are:

1. There is no suitable employment* (which may include technical and professional employment) available for the adversely affected worker.
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.
6. Such training is suitable for the worker and available at a reasonable cost.

* Suitable employment is defined in the Trade 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.

The six (6) criteria that must be met prior to training approval are evaluated by the MA TAA Unit via Massachusetts One Stop Employment System (MOSES). Therefore, it is vital that all tabs in a participant's record (i.e. barriers, case plan, testing, etc.) are completed in full prior to submission of the training package.

Reasonable Costs

When determining "reasonable costs", the MA TAA Unit must consider the following:

1. Costs of a training program shall include tuition, and related expenses (books, tools, licensing/exam and academic fees), travel or transportation expenses, and subsistence expenses;
2. In determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training which is available within the commuting area. When training that is substantially similar in quality, content and results is offered at more than one training provider, the lowest cost training shall be approved; and
3. Training at facilities outside the worker's normal commuting area that involves transportation or subsistence costs which add substantially to the total costs shall not be approved if other appropriate training is available.

For training program approvals and modification requests for approval made **on or after February 1, 2012** the Commonwealth has established the following maximum reasonable cost levels (inclusive of tuition, fees and books, supplies and equipment) under the TAA Program:

- \$10,000 for stand-alone remedial training (see Attachment A)
- \$20,000 for vocational training (exclusive of any associated remedial training) – this limit is not applicable to TAA funded OJT
- \$28,000 for degree programs (exclusive of any associated remedial training) – the limit is not applicable to TAA funded OJT

The maximum cost per individual for tuition and related expenses including any travel or subsistence related costs cannot exceed \$35,000 - the limit is not applicable to TAA funded OJT.

Training programs that would otherwise not be approved under TAA based on these established Reasonable Cost Levels may be approved if a worker voluntarily commits to using other public or private funds to pay that portion of the total training cost that exceeds these established levels. Private funds may include grants, scholarships, employer funding or other sources available to the participant not requiring the use of funds personal to the worker, relatives or friends.

To the extent that required tools or other equipment (including uniforms and other required work attire) must be acquired in order for the TAA eligible trainee to participate in approved training, the required tools and/or equipment and their associated costs shall be itemized as part of the individual's training plan and included in calculating the overall cost of training. Payment will be covered as part of the invoicing process if said tools and/or equipment will be acquired from the training provider.

If required tools and/or equipment must be acquired from sources other than the training provider, the trainee shall submit a signed, written request for reimbursement including all purchase receipts to the case manager, who will review and forward the request to the MA TAA Unit for approval and payment*.

*As a tax-exempt public agency, DCS cannot reimburse sales tax paid on any item. DCS will provide a copy of its exemption with remittance, if requested.

TAA will also cover subsistence costs such as transportation, meals and lodging if the training facility is located more than 30 miles (round trip) beyond the individual's commuting area as iterated in MassWorkforce Policy No. 100 DCS 13.101, Travel Allowances While in Training Under the Trade Programs. Such subsistence costs must also be included in the calculation of the overall cost of training.

Other than tools and equipment deemed necessary to participate in an approved training program and travel allowances approved in accordance with the TAA travel allowance cited above, TAA funds (in accordance with §667.21 of the TAA

Regulations) may not be used to cover costs of other necessary support services. The cost of support services such as basic education, child or elder care, work orientation, communication skills, etc. must be covered with resources other than TAA and may require co-enrollment in a WIOA-funded program (Adult, Dislocated Worker or Youth). Costs associated with the provision of support services not paid with TAA funds will not be included in the calculation of the overall cost for training.

Licensing and Exam Fees

SESA 98-12 expressly stated that licensing and exam fees were not allowable by citing 20 CFR 617.22(a)(6)(iii). Recently, DOL indicated that this is not a completely contextually appropriate reference. 20 CFR 617.22(a)(6)(iii) specifically states what costs are to be considered in determining the reasonable cost of training. It does not actually place an outright restriction on all costs. In fact, the inclusion of the term “related expenses,” clearly demonstrates that the Department recognized that there were costs other than tuition that would have to be paid for training to ensure that criteria number 3 is met. An individual trained in an occupation that requires a license or exam cannot be reasonably expected to find employment in that field without the license or successful completion of the exam. On August 25, 2006, the Department filed a Notice of Proposed Rule Making to implement the changes to Trade as a result of the Trade Reform Act of 2002. On page 50811, the Department stated that cooperating state agencies must pay the costs of initial licensing and certification test fees. This statement relied on no new statutory definition or language with reference to “related expenses.” Although the NPRM was never issued as a Final Rule, it nevertheless represents the Department’s interpretation of the current statute. As the SESA Issuance is neither a TEGL nor regulation and represents only the opinion of the Boston Regional Office at the time it was issued, Regional DOL has provided documentation to the States as a means of providing the newest interpretation of “related expenses” under 20 CFR 617.22(a)(6)(iii).

As such, TAA funds may be used to pay for licensing and exam fees related to the occupational training for which a participant is enrolled in as Trade-approved training.

Additional Training Requirements

When requesting training approval, at least two “like programs” from distinct providers must be researched, compared, and submitted for consideration. In approving training, the Trade Unit must consider cost, suitability for the worker, quality of the training being provided and performance results. A more expensive training may be approved if it is clearly demonstrated to be of higher quality or is expected to produce better results for the worker in quickly returning to suitable employment.

Required electives as part of a college curriculum must be related to the major that the person has been approved under TAA to undertake. For example, a customer approved as an Accounting major should be taking electives listed under the business/accounting program of study; not, for example, Yoga or Photography. Such classes that are not pre-approved may be denied for payment as well as any equipment/supplies required for that course. Also, see MassWorkforce Policy No. 100 DCS 13.104, TAA Training Materials Allowed.

The MA TAA Unit requires submission of accurate training course outlines with cost breakdowns for ALL certificate and degree programs at any college/university at the same time as the training request submitted in MOSES (see Attachment B for a sample outline). A training package will not be considered complete, and thus not approvable, unless the training course outline is faxed or emailed at the same time as the training request.

Please note however, that course outlines *are not* required for certificate programs at *vocational schools*.

The training course outlines must include itemized cost estimates for each of the following elements:

- Tuition
- Fees
- Books
- Supplies
- Health Insurance
- Other (such as an itemization of required tools, equipment, uniforms)

Training course outlines must also specifically identify costs associated with any required remedial/developmental education components of the planned training program. Therefore, local areas must assure that identification of any required remedial/developmental education needed by a TAA eligible individual is identified through appropriate assessment/testing *prior* to submission of the training request to the MA TAA Unit.

The regulations governing TAA do not specifically address the issue of failed courses. To date, the Department of Labor has not issued specific guidance on failed courses, other than in the context of the language in TEGL 10-11 addressing benchmarks under Completion TRA. In determining whether to permit a participant to repeat a failed course, the Commonwealth is held to the “reasonableness” of the expense as defined within the Office of Management and Budget circulars contained in 2 CFR 225. The decision to allow a course to be repeated will be made on a case-by-case basis taking into consideration the participants’ proactive approach and diligence in receiving assistance towards the course(s)/components in question, the costs, training period, TRA benefit period and any other factors that govern training approvals.

Under this policy, it is the responsibility of the local area to instruct all TAA-eligible individuals to notify the TAA Unit as soon as possible of any change

made by the provider to their training program in order to assure the training contract is appropriately amended to account for changes to course duration and/or cost necessary to complete the training program.

A TAA-eligible individual who has taken a subsequent job in what is determined to be “non-suitable employment” and who has been approved for TAA training may elect to either terminate his/her employment or continue in full or part-time employment while undertaking said approved training. In such a case, the continued employment will not disqualify the individual with regard to maintaining his/her Unemployment Insurance or TRA eligibility. However, if the individual elects to continue working while attending training, the wages earned may affect the amount of weekly UI and/or TRA that is received.

A TAA-eligible individual who is participating in TAA approved training and later obtains employment in what is determined to be “suitable employment” may elect to either terminate his/her training or continue in full or part-time training to complete the portion of the training for which the Commonwealth has already incurred an expense (i.e.: current semester, quarter, etc.). After that time, should the participant choose to continue in the training program, they will do so at their own expense.

Participants, while working, and in order to continue in training may do so as long as the following conditions are met:

- a. The state determines that the training completion serves the long term employment goals of the individual and
- b. The participant continues to meet benchmarks that were established as part of the training plan, even though the employed training participant will no longer be eligible for TRA cash benefits.

In these cases, his/her Unemployment Insurance or TRA eligibility may change (WBA or eligibility overall) depending on the law the individual is eligible under and the wages earned.

Training conducted outside of the United States cannot be approved. For purposes of the Trade Program, the United States includes the 50 states, the District of Columbia and Puerto Rico. Training for occupations for which there is a demonstrable lack of employment opportunities, or for which the occupation provides no reasonable expectation of permanent employment, also cannot be approved.

Entrepreneurial training programs are not allowable under the TAA Program.

Other funds should be sought and may be used towards the costs of TAA approved training. Such funds (i.e. WIOA, Pell, Scholarships, and VETS) can also assist in paying for cost items that TAA Program funds cannot cover.

For those Workers under the 2002 rules:

For any individual determined to be under the Trade Reform Act of 2002 rules, in order for him/her to be eligible for Trade Readjustment Allowances, he/she must be *enrolled in training, participating in training, have completed training* or be approved to be “waived” from training no later than **8 weeks** from the date of the petition certification *or 16 weeks* from the worker’s most recent total separation from adversely affected employment.

Training may only be approved on a full time basis and certified workers may not begin approved training until they have been totally or partially separated from adversely affected employment.

Participants can be approved for training under Trade for up to 104 weeks, or up to 130 weeks if also enrolled in remedial training at any point (see Attachment A for remedial training examples).

For those Workers under the 2009 TAA rules:

For any individual determined to be TAA eligible under a petition filed *on or after* May 18, 2009 and *before* February 15, 2011, in order for him/her to be eligible for Trade Readjustment Allowances, he/she must be *enrolled in training, participating in training, have completed training* or be approved to be “waived” from training no later than **26 weeks** from the date of the petition certification *or 26 weeks* from the worker’s most recent total separation from adversely affected employment.

Training may be approved on a full-time or part-time basis, although full-time training is required for Trade Readjustment Allowance (TRA) eligibility. The hours in a day and days in a week of attendance in training must be full time in accordance with established hours and days of the training provider. Additionally, TRA benefits cannot be paid for any week which begins and ends with a scheduled break that is longer than 30 days (not including weekends or National Holidays). See MassWorkforce Policy No. 100 DCS 13.105, Trade Programs Breaks in Training.

Participants can be approved for training for up to 156 weeks. However, they will not be eligible to receive TRA benefits for longer than 130 weeks if they did not participate in remedial training. Training can be approved for a time period greater than the weeks of TRA available, but the participant is required to document a level of financial stability adequate to support his/her continued participation in approved training for the duration requested. Please note there is no specific form to document this information. It is a local decision as to what form of documentation is used.

For those Workers under the 2011 and 2015 TAA rules:

For any individual determined to be TAA eligible under a petition filed *on or after* May 18, 2009 and *before* February 15(TAAEA 2011), 2011, and on January

1, 2014 and after (TAARA 2015), in order for him/her to be eligible for Trade Readjustment Allowances, he/she must be *enrolled in training, participating in training, have completed training* or be approved to be “waived” from training no later than **26 weeks** from the date of the petition certification *or 26 weeks* from the worker’s most recent total separation from adversely affected employment.

Training may be approved on a full-time or part-time basis, although full-time training is required for Trade Readjustment Allowance (TRA) eligibility. The hours in a day and days in a week of attendance in training must be full time in accordance with established hours and days of the training provider. Additionally, TRA benefits cannot be paid for any week which begins and ends with a scheduled break that is longer than 30 days (not including weekends or National Holidays). See MassWorkforce Policy No. 100 DCS 13.105, Trade Programs Breaks in Training.

Participants can be approved for training for up to 130 weeks. However, they will not be eligible to receive TRA benefits for longer than 117 weeks if they do not meet performance benchmarks established throughout their training plan (See Policy 100 DCS 13.106, Completion TRA Program Requirements for TAA). Training can be approved for a time period greater than the weeks of TRA available, but the participant is required to document a level of financial stability adequate to support his/her continued participation in approved training for the duration requested. Please note there is no specific form to document this information. It is a local decision as to what form of documentation is used.

Adversely Affected Incumbent Workers (For workers under Trade Acts of 2009, 2011 and 2015)

Certified workers may begin approved training when threatened with separation from adversely affected employment. Such workers are referred to as “adversely affected incumbent workers” (see Attachment A).

Registered Apprenticeship Programs & Trade

Registered Apprenticeship programs offer workers a combination of employment and on-the-job learning and related instruction. The Trade Program can pay for the classroom portion of registered apprenticeship programs. TAA funds can be used until the worker attains “suitable employment” at the “apprentice” level or up to a maximum of 156 weeks, whichever comes first (some apprentice programs exceed 156 weeks in length). Because registered apprenticeship combines classroom instruction with employment, workers enrolled in a registered apprenticeship program may not be able to collect TRA due to the wage levels they earn. However, they may be eligible for Reemployment Trade Adjustment Assistance (RTAA) benefits if all criteria are met (see Attachment A).

Workers in Registered Apprenticeship programs under the 2002 rules will not be eligible for ATAA.

Remedial Training

Remedial training provides workers with basic skills necessary to participate in higher level occupational training courses and programs. Such basic skills may include language, writing and math skills among others and attainment of such skills may be a formal prerequisite to participation in certain training programs (see Attachment A).

Alien Verification

Section 239(k) of the 2009 Act requires that states re-verify an individual's immigration status if the documentation provided by the individual during initial verification will expire during the period in which that worker is potentially eligible to receive TAA benefits (i.e. training, TRA cash benefits, etc.). One of the six criteria for approval of training is that there is a "reasonable expectation of employment following completion of such training." Where a worker is not in a satisfactory immigration status, there is no such reasonable expectation. Therefore, a training program is not approvable if the individual is not eligible at the time of application for work and at least one day following the completion of training. Although only explicitly included in the 2009 and 2011 Acts, this requirement applies to all Trade participants.

Action

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

Effective: Immediately

Attachments: A - Incumbent Workers, Apprenticeship and Remedial Training Under TAA
B - Trade Programs-Individual Course Outline Form (sample)

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 11-02, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, issued October 10, 2002 and subsequent changes
- TEGL 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 on May 15, 2009 and subsequent changes
- TEGL 10-11, Operating Instructions For Implementing the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)
- TEGL 07-13, Operating Instructions for Implementing the Sunset Provisions of the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA or the 2011 Amendments)

- TEGL 05-15 Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015)

Inquiries: Please email all questions to PolicyQA@MassMail.State.MA.US. Also, indicate Issuance number and description.