



# Workforce Development System

## Technical Advisory



May 18, 2004

### Workforce Development System Technical Advisory #04-6

- TO:** Chairpersons of Local Workforce Investment Boards  
Chief Elected Officials  
WIA Grant Recipients  
WIA Fiscal Agents  
WIA Local Area Contact Persons
- SUBJECT:** Guidance on Integrating Services Under the Trade Act Programs--the Trade Adjustment Assistance (TAA) Program, The North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA) Program, and the Trade Reform Act of 2002 with the Workforce Investment Act
- Purpose:** To transmit New York State Department of Labor's (NYSDOL) policies implementing the Trade Reform Act of 2002, which amended the Trade Act of 1974, particularly the requirements for the provision of services available under the Workforce Investment Act (WIA) to dislocated workers eligible for Trade benefits. For purposes of this document references to the "Trade Act" shall include references to the federal statutes relating to the Trade Act of 1974 and the Trade Reform Act of 2002. It is the goal of New York State to ensure that dislocated workers, including Trade-certified workers, receive services available through the One Stop service delivery system to ensure rapid reattachment to the workforce through the identification or development of suitable employment. Further, New York State has determined that the participants under WIA and the Trade Act are best served through the local workforce investment areas. New York State Department of Labor has allocated to each local workforce investment area sufficient resources to support the outreach (including the Rapid Response services), orientation, case management, job development and follow-up services for dislocated workers eligible for Trade Adjustment Assistance (TAA) benefits. Federal Trade benefits include funding for

Trade Readjustment Allowances (TRAs), out of area job search, job relocation and Trade-approved training.

**Reference:** Trade Reform Act of 2002; TEGL 11-02 and 11-02 change 1, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 enacted by the Trade Act of 2002; TEGL 21-00 and TEGL 05-00, both titled Guidance on Integrating Services under the Trade Act Programs - Trade Adjustment Assistance (TAA) and North American Free Trade Agreement - Transitional Adjustment Assistance (NAFTA - TAA) - with the Services Provided under the Workforce Investment Act (WIA); TEGL 2-03, Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers; 20 CFR Trade Adjustment Assistance for Workers, Program Memorandum - OVAE – 99-14, Responsibilities and Opportunities Created by Title I of the Workforce Investment Act of 1998.

**Background:** The Trade Reform Act of 2002, signed by the President in August 2002, and effective November 4, 2002, made sweeping changes in the administration of the Trade program. Several new benefits were added, such as the Health Coverage Tax Credit (HCTC) and the Alternative Trade Adjustment Assistance (ATAA) for Older Workers. The changes create a seamless system of services for WIA dislocated and trade-affected workers that further enhance the positive outcomes anticipated by the amendments. Congressional action on WIA Reauthorization and pending federal regulations for the Trade Act may require additional modification of these policies.

The primary goal of the Trade program is to assist trade-affected workers in locating new jobs as rapidly and effectively as possible. The Trade Reform Act of 2002 amends the Trade Act of 1974 to ensure that intervention strategies used for programs, benefits, and services will offer rapid, suitable, long-term employment for adversely affected workers. Action taken by the NYSDOL to provide resources to local workforce investment areas promotes the full integration of employment and training services and activities related to the federal Trade program with the One-Stop System and will allow trade-affected workers to access appropriate services within the strict time limits for Trade benefits.

Seeking closer alignment with other workforce services, the U.S. Department of Labor in 2000 issued Training and Employment Guidance Letter (TEGL) 05-00, entitled Guidance on Integrating Services Under the Trade Act Programs – the Trade Adjustment Assistance (TAA) Program and the North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA) Program (Including the Secondary Worker program) – with the Workforce Investment Act (WIA). TEGL 05-00 provided guidance promoting the seamless integration and coordination of services, including secondarily impacted workers, provided under the Trade Act with WIA. Additionally, an agreement between the Governor and the Secretary of Labor outlines goals for the implementation of the Trade Act. The goals include:

- Increasing the focus on early intervention, up-front assessment, and reemployment services for adversely affected workers;
- Using one-stop centers as the main point of participant intake and delivery of benefits and services; and
- Maintaining fiscal integrity and promoting performance accountability in accordance with Section 231 of the Trade Act.

TEGL 05-00 sets out activities that must be conducted by State-level staff as well as activities allowable under WIA. As noted, WIA reauthorization may change certain aspects of this guidance. Currently, the NYSDOL is responsible for the following activities:

- Receive petition, trigger rapid response;
- Provide a legal notice of certification through publication in a local newspaper (outreach);
- Provide notification to local boards of filed Trade petitions;
- Notify trade-affected workers of approved Trade certifications, Alternative Trade Adjustment Assistance and Health Care Tax Credit eligibility;
- Determine individual eligibility to TAA;
- Pay weekly TRA benefits;
- Provide orientation to TAA benefits/services;
- Deny and revoke waivers from training;
- Deny requests for training;
- Deny requests for job search and relocation allowances;

- Provide regular updates to local boards on federal Trade funds, WIA National Emergency Grant funds, and additional assistance funds that may be available to support training for trade-affected workers;
- Process hearings and appeals related to determinations and decisions concerning Trade Act funded benefits and other services, including the following: TRAs; job relocation allowances; job search allowances; subsistence allowances while in training, including certain costs associated with an approved training plan at a provider outside the commuting area, as defined by applicable unemployment insurance law or regulation; and training programs as approved courses of study;
- Approve the use of a reimbursement method to ensure the adequate oversight and integrity of federal funds made available for Trade-approved training;
- Provide required reports to USDOL and others as required by law or regulation; and
- Ensure the integrity of data for reports provided to federal agencies as required by law or regulation.

**Action:** **Local workforce investment boards shall ensure that their strategic planning process includes an analysis of the local labor market to:**

- Determine employer needs;
- Determine emerging, targeted, and demand occupations;
- Identify employment opportunities, which include those with a potential for career advancement; and
- Identify employer-based training opportunities.

**Boards shall set local policies for a Trade Act service strategy that coordinate various service delivery approaches to:**

- Assist dislocated workers eligible for Trade benefits in obtaining suitable employment as an alternative to referral to training;
- Promote the use of WIA core and intensive services to support the rapid reattachment to the workforce;
- Refer individuals to prevocational and vocational training in demand and targeted occupations; and

- Assist in job retention and career advancement.

**Boards shall ensure that dislocated workers eligible for Trade benefits, who are unable to find suitable employment through WIA Title I core services, are co-enrolled in WIA Title I dislocated worker services for referral to WIA-funded intensive and Trade-funded training services.**

**Boards shall submit a revised Local Plan by July 1, 2004**, which will incorporate services for the Trade Act customer as part of the overall WIA Dislocated Worker services design in the local area.

**The NYSDOL policies which shall govern local board policies and practices for Trade Act services include:**

**A. SEQUENCE OF SERVICE**

- Dislocated workers eligible for Trade benefits, who are unable to find suitable employment through WIA Title I core services, must be co-enrolled in WIA Title I dislocated worker services for referral to WIA funded intensive and Trade-funded training services.
- Workers eligible for Trade benefits must be afforded career counseling including assessment necessary to determine an employment plan; job development and placement, case management and support services, such as child care and transportation, funded through sources consistent with local board policies and procedures.
- Consistent with the veteran's priority afforded under Adult and Dislocated Worker programs; a trade affected worker who is also a veteran will be given priority over non-veterans for all available services.
- A determination of eligibility for Trade Act services does not supplant the eligibility process for enrollment in the WIA Dislocated Worker Program. While many elements are the same, boards shall make certain that their policies reflect that prior to enrollment in WIA Title I customers meet the requirements for selective service

registration and the legal right to work in the United States.

## **B. TRAINING**

- Affected workers must receive assistance in enrolling in an approved training program prior to the 8/16 week deadline for TRA, or be issued a waiver from training prior to the 8/16 week deadline, if appropriate.
- Effective with the issuance of this Technical Advisory, New York State Department of Labor System Message 309753, issued on September 25, 1991, is rescinded. To reflect the limited funds available in New York State for TAA training, TAA approved training plans cannot exceed a maximum amount of \$10,000 for a plan of up to 130 weeks and \$5,000 for a plan up to 52 weeks. These caps are inclusive of all planned costs and funding streams including transportation and subsistence allowances.
- Exceptions to the 52-week plan cap will be granted only where it can be demonstrated that funds available under other federal laws are being leveraged to the maximum extent allowable. Any exception to the 52-week plan must be reviewed and approved by the One Stop Operator and WIB Director to ensure that there is sufficient justification and support for the exception.
- No exceptions will be made to the \$10,000 cap on a 130-week plan.
- Priority in the disbursement of all TAA training funds is given to on-the-job training and customized training plans and these plans will be funded first; second priority is to be given to TAA training plans which leverage other federal funding sources regardless of when the customer has been placed on a Trade Act training waiting list.
- Evidence, in the form of an Employment Plan and/or Training plan, must document that the 6 statutory criteria are met for approval of a training plan. These criteria and others for training approval are detailed in the desk guide attached to this TA.
- Transportation payments permissible under Trade Act are capped at no more than the current federal rate per mile and may be

included in a TAA approved training plan ONLY if the commuting distance for training purposes is greater than the current UI definition of reasonable commuting distance. This definition states that a distance, which requires travel time of one hour by private transportation or one and one-half hours by public transportation, is considered reasonable. Local boards may set policy limits on the inclusion of such payments consistent with the WIA Title I program policies.

- Payment made for Transportation allowance cannot exceed the lesser of the actual cost of travel by the least expensive means reasonably available or the cost per mile at the current federal rate per mile. An allowance for daily commuting cannot exceed the amount otherwise payable as subsistence.
- Subsistence payments shall not exceed the lesser amount of the individual's actual per diem or 50% of the prevailing per diem rate authorized under the federal travel regulations in the area that the training takes place.
- When appropriate training is available without the transportation and subsistence, then the cost of training requiring subsistence (being unreasonably higher) provides a basis for disapproving the training. If no training is reasonably available without substantial transportation/subsistence costs, training may still be disapproved for the cost alone. A training waiver should be issued if appropriate.
- A Training Determination to approve a training request must be completed for each affected worker whose training has been approved. This form is located on the TAA Database with instructions for completion and distribution.
- A notice must be issued to the State TAA coordinator when a training plan does not meet eligibility criteria so that a determination detailing the individual's appeal rights can be issued.

- When a student completes or otherwise ends training, the State TAA coordinator will be notified..
- Regular contact must be maintained with the student to ensure satisfactory progress in the course. If it is determined that satisfactory progress is not being achieved, action must be taken to remedy the situation or terminate the training.

### **C. JOB SEARCH AND RELOCATION ALLOWANCES**

- Adversely affected workers may request job search and relocation allowances.
- If suitable employment cannot be obtained for the TAA individual within the local commuting area, consideration may be given for out-of -area employment within the United States.
- Local areas will accept, review and make a determination for such requests. A desk aid detailing the criteria for approval is attached to this advisory (see Attachment E).
- If using TAA funds for these benefits, Local Areas must obtain confirmation from the NYSDOL that TAA funds are available for the Job Search or Relocation allowance prior to issuing approval to applicant. Funds will be requested and confirmed using the TAA database.
- The local area will not approve any allowance retroactively. Individuals must request and be approved for such allowance(s) before travel commences.
- A notice must be issued to the State TAA coordinator when a request for an allowance does not meet eligibility criteria so that a determination can be issued that details the individual's appeal rights.

### **D. TRADE READJUSTMENT ALLOWANCE/WAIVER FROM TRAINING**

- The Trade Act requires an affected worker to be enrolled in approved training or have completed approved training to be eligible for a Trade Readjustment Allowance. However, there are certain conditions that, when met, waive this requirement and allow the individual to receive up to 26 weeks of basic TRA.



- Local areas will issue a waiver if it is determined that training is not appropriate or feasible. The desk aid regarding waivers details the criteria for waivers.
- A waiver is issued based on the employment plan including relevant assessments. For any waiver issued, an appropriate plan of action is required and must be documented on the employment plan. Employment plans, including those that involve training, must be reviewed and updated as appropriate as waivers are issued and revoked.
- An approved training plan must be established prior to issuing a waiver for: “enrollment unavailable” or “training not available”.
- When a waiver is issued because of “lack of funds,” that affected worker must be placed on a Trade Act training wait list. This can only occur when a wait list for Trade funds exists at the time of the waiver and it is documented that all other sources of funding have been exhausted.
- All waivers must be reviewed every 30 days at a minimum. The maximum duration of a waiver is 6 months. Local areas must develop a procedure to ensure that waivers are reviewed at least every 30 days to ascertain that the conditions upon which the waiver was granted continue to exist. If conditions have changed, the waiver may be revoked (based on the original circumstances that no longer exist). A new waiver may be issued as appropriate.
- A waiver may be extended beyond 6 months in any case where it is necessary to cover the worker’s full entitlement to Basic TRA. This may occur when a waiver is issued before the worker actually begins to receive Basic TRA.
- When a waiver is issued because an individual has marketable skills, the 30-day reevaluation must examine and document the reasons that the individual has not obtained employment during the job search. A review of the job search activities and job contacts must be used in determining the

continued validity of a waiver based on marketable skills.

- When a waiver is issued for any reason, the individual's employment plan will prescribe the necessary job search activities. The Desk Reference provides general work search guidelines for individuals receiving Unemployment Insurance and TRA benefits.
- When a waiver is no longer valid or cannot be issued, local areas will notify the State TAA coordinator; so that the Department may revoke or deny the waiver request using a form that details the individual's appeal rights.
- Local areas may only revoke a waiver in order to issue a Training Determination for approved training.

#### **E. REPORTING STANDARDS**

OSOS will be the data collection/case management/reporting system that must be used statewide to capture Trade Act participant information. Local boards must ensure that documentation is maintained in OSOS as required per this Technical Advisory. The local area may enter data directly into OSOS; if access is needed to OSOS see Technical Advisory 02-4, New OSOS Security Permissions and Security Request Procedures, issued May 3, 2002. Reporting requirements include:

- Timely and accurate reporting of data required for the provision of services to the trade-affected worker;
- Tracking and reporting of participation;
- Tracking and reporting of support services;
- Ensuring progress toward achieving the goals and objectives in the Individual Employment Plan as defined by WIA;
- Notification to the NYSDOL if a participant drops out of training; and
- Monitoring other requirements, as prescribed by the NYSDOL.

These elements are substantially the same for the Dislocated Worker customer and should be treated/tracked/reported in the same manner. It is

anticipated that this data collection will not overburden local area staff.

Questions regarding this Technical Advisory may be submitted via the NYSDOL's Workforce New York website ([workforcenewyork.org](http://workforcenewyork.org)) by choosing **Local Areas** (from the left side of the homepage), then **Trade Act**, then **E-Mail Questions**.

**Attachments:**

- A. [Trade Act Process Flow](#)
- B. [Trade Act Individual Employment Plan \(Updated 7/10/14\)](#)
- C. [Instructions for Developing the Employment Plan \(Updated 2/27/14\)](#)
- D. [Trade Act Guidelines and Timelines](#)
- E. [Trade Adjustment Assistance Desk Guide](#)
- F. [Procedural Instructions for Data Entry of Customer Trade Act Data into OSOS](#)