

**Workforce Development System
Technical Advisory #21-03
April 27, 2021**

To: Workforce Development Community

SUBJECT: Trade Adjustment Assistance for Workers (“Trade Act”) Program (the Trade Adjustment Assistance Reform Act (TAA) Program, the Trade and Globalization Adjustment Assistance (TGAA) Program, the Trade Adjustment Assistance Extension Act (TAAEA) Program, and the Trade Adjustment Assistance Reauthorization Act (TAARA) Program)

PURPOSE

Establish ongoing New York State Department of Labor (NYSDOL) policies implementing the Trade Adjustment Assistance Reauthorization Act of 2015, which amended the Trade Act of 1974.

Rescind and replace Workforce Development System Technical Advisory (WDS TA) #04-6, New York State Department of Labor (NYSDOL) 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, the Trade Reform Act of 2002 with the Workforce Investment Act (05/18/2004), and all subsequent revisions.

Note: For purpose of this document, references to the “Trade Act” shall include references to the federal statutes relating to the Trade Act of 1974, the Trade Reform Act of 2002, TGAA of 2009, TAAEA of 2011, TAARA of 2015, and the 2020 TAA for Workers Final Rule.

POLICY

In New York State (NYS), the Trade Act Program is implemented using a State Administered, Locally Operated model where all Trade Act participants are co-enrolled in the Workforce Innovation and Opportunity Act (WIOA) Dislocated Worker (DW) Program, consistent with 2020 Trade Act regulatory requirements. Under this model, NYSDOL retains authority to:

- Approve and deny all requests for Trade Act benefits;
- Set the soft cap on funding to be provided for training;
- Establish a procedure to use when the cap may be exceeded; and

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- Establish the commuting area for those eligible to receive mileage reimbursement benefits under the Trade Act Program.

Additionally, NYSDOL provides oversight and monitoring of Trade Act as appropriate.

Local Workforce Development Boards (LWDBs) develop training and/or employment plans and determine all appropriate services for Trade Act Program participants in accordance with the Trade Act and the WIOA DW Program.

All Trade Act user guides and forms developed by NYSDOL must be followed. Guides and forms for the Trade Act Program can be found on the Workforce Professionals Tools page of the [NYSDOL website](#).

Training program costs shall be inclusive of transportation and subsistence (lodging and meals). Transportation or subsistence costs that add substantially to the total costs shall not be approved if other appropriate training is available that does not include these costs.

Priority in disbursement of all Trade Act training funds is given to On-the-Job Training (OJT) and customized training plans; second priority is to be given to other Trade Act training plans regardless of what date the customer was placed on a Trade Act training waiting list.

ACTION

Funding for Training

NYSDOL has established the soft training cap and procedure for exceeding the cap identified in the Policy section of this WDS TA. All information is provided in **Attachment A – Trade Act Funding Information** which also details the order in which different funding streams may be used toward financing a training program.

Commuting Area

NYSDOL has defined commuting area identified in the Policy section of this WDS TA, which is presented in **Attachment B – Trade Act Commuting Parameters**. To be eligible for mileage reimbursement benefits under the Trade Act Program, a participant must travel outside of his/her commuting area. NYSDOL will reimburse a Trade Act participant for the distance traveled outside their commuting area only.

Training/Employment Plans

LWDBs must take action related to the development of individual training and/or employment plans for Trade Act participants, related to Trade Act services. **Attachment C – Trade Act Process Flow** provides more detail on specific responsibilities.

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Step-by-step instructions on how to access Trade Act benefits for training and reemployment can be found in the TAA Procedural Guide. This guide, as well as a Trade Act Individual Employment Plan template and instructions on how to complete it, are available on the on the Workforce Professionals Tools page of the [NYS DOL website](#).

Integrating Services

NYS DOL partners with LWDBs and Career Center staff to promote the integration of services available under the Trade Act through required customer co-enrollment in Trade Act and WIOA Title I DW services. Specifically, federal regulations state that the One-Stop Career Center System must co-enroll Trade-affected workers who are eligible for WIOA's DW Program and must also make co-enrollment available to Trade-affected workers who are eligible for other One-Stop partner programs.

This partnership provides Trade-affected DWs the ability to access appropriate services, within the established time restrictions, to be eligible to receive Trade Act benefits.

All LWDBs must ensure that Trade Act participants have a training and/or employment plan in accordance with the provisions of these services.

1. Sequence of Service

- Consistent with the veteran's priority afforded under WIOA Title I Adult and DW programs, a Trade-affected worker who is also a veteran will be given priority over non-veterans for all available services; and
- A determination of eligibility for Trade Act services does not supplant the eligibility process for enrollment in WIOA Title I DW services. While many elements are the same, LWDBs shall make certain that their policies reflect that prior to enrollment in WIOA Title I, customers meet the requirements for selective service registration and the legal right to work in the United States.

2. Reporting Standards

LWDBs must ensure that documentation is maintained in OSOS as required per this WDS TA. 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 WIOA;
- Notification to NYS DOL if a participant drops out of training; and

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- Monitoring other requirements, as prescribed by NYSDOL.

These elements are substantially the same for the DW customer and should be treated/tracked/reported in the same manner.

For further information on the Trade Act Program, see the TAA Quick Guide on the Workforce Professionals Tools page of the [NYSDOL website](#).

REFERENCES

[Trade Adjustment Assistance Reauthorization Act of 2015](#)

[Trade Adjustment Assistance for Workers Final Rule](#)

[TEGL No. 05-15, Change 1](#), Operating Instructions for Implementing Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2015

[TEGL No. 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)

[TEGL No. 11-02, Change 3](#), Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002 – Revised Eligibility Requirements for Trade Readjustment Assistance (TRA) and Health Coverage Tax Credit (HCTC)

[TEGL No. 22-08](#), Operating Instructions for Implementing Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009

[Desk Guide](#), Trade Adjustment Assistance Reform Act, Trade and Globalization Adjustment Assistance Act, Trade Adjustment Assistance Extension Act, including Reversion 2014

[TAA Quick Guide](#), Trade Adjustment Assistance Reauthorization Act of 2015 and Extension Act of 2011

[TAA Procedural Guide](#), Staff Guide to Procedures for Requesting Benefits

WIOA Regulations at 20 CFR §617.22(a)(6)(iii)(A)-(C), §617.24, §617.3, and §617.59

[TEGL No. 19-16](#), Operating Guidance for the Workforce Innovation and Opportunity Act

[TEGL No. 1-19](#), Trade Adjustment Assistance Data Integrity (TAADI)

INQUIRIES

Inquiries regarding this TA may be directed to: TAA.WDTD@labor.ny.gov.

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ATTACHMENTS

- A. Trade Act Funding Information
- B. Trade Act Commuting Parameters
- C. Trade Act Process Flow

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TRADE ACT FUNDING INFORMATION

Soft Training Cap

Per the Trade Adjustment Assistance (TAA) for Workers Final Rule at 20 CFR §618.650, all States should establish their own maximum, reasonable cost of training, called a soft training cap. A soft training cap must cover the reasonable cost of suitable training for high growth, demand, and green occupations in all localities to which those caps apply.

Effective April 27, 2021, New York State (NYS) established the following Trade Act funding cap(s) on approved training programs:

- A soft cap of \$25,000 for all approved programs up to 130 instructional weeks.

At the end of each Federal Fiscal Year (FFY), the NYS Department of Labor (NYSDOL) will review the number of requests it received to exceed the soft training cap in that FFY, and determine whether the soft training cap amount is still appropriate. NYSDOL will change or end the soft cap amount when it no longer reasonably reflects the average cost of training available in NYS's Local Workforce Development Areas (LWDAs).

Exceptions

Exceptions to Trade Act funding caps will be considered by the State TAA Coordinator and the NYSDOL Division of Employment and Workforce Solutions (DEWS) on a case-by-case basis when:

- It is determined that the program is the most appropriate training for the Trade Act customer; and
- The training program is available at a reasonable cost (20 CFR §618.610(f)(2)).

Funding Stream Use and Sequence

Trade Act funds will remain the primary source of funding for all Trade Act customers and Trade Act funds will be the only funding stream utilized for Trade Act-approved training in most cases. If the total cost of training exceeds the Trade Act funding cap, Trade Act funds will be used to exceed the cap.

Exceptions to the sole use of Trade Act funds may be made at NYSDOL's discretion and will be considered on a case by case basis. For example, an exception may be considered if a Trade Act customer is also a Veteran eligible for a Veteran's Grant.

Trade Act customers cannot use personal or student loans to pay for any portion of the training program that is covered under the Trade Act programs. Additionally, Federal Pell Grant funds must be used for living expenses and cannot be used to pay for Trade Act approved training.

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Funding Award Process

Trade Act funds will be provided to Local Workforce Development Boards (LWDBs) through the Notice of Obligational Authority (NOA) process to support the provision of services under the TAA program. NOAs will be used to reflect approved requests by LWDBs for additional funds and/or the de-obligation of funds previously approved for training that did not occur or the final cost of training was less than requested. Funds awarded to LWDBs under the TAA program may be expended only for costs identified in approved plans and must be reported to NYSDOL on a monthly basis.

Funding Request Parameters

NYS will obligate Trade Act Funds for only the training costs needed to cover expenses in the current FFY. All requests for TAA funds used to support training plans must reflect only the funds for the portion of training that will be expended during that FFY. A request for funds may be submitted not sooner than 180 days prior to the start of the training.

If the duration of the training spans more than one FFY, a subsequent request for TAA funds associated with the expenditures that will occur during the following FFY must be made.

A training plan for an individual is not an obligating document nor should it be considered a contract that guarantees services. For approved, continuing training programs that span FFYs, every effort will be made to honor subsequent requests based on the availability of TAA funds.

Other

Training programs must include only the courses or certificates required to work in the customer's chosen occupation, complete the educational program the customer is enrolled in (for example, electives required by the training provider), and at the most reasonable cost possible. Trade Act regulations permit approval of one training program that leads to a single occupational goal at the most reasonable cost possible. NYSDOL will only approve training programs that are determined to be at the most reasonable cost considering the customer's individual circumstances. Therefore, the customer's first choice of training provider(s) may not be approved. For example, training at a private or for-profit proprietary school may not be approved if the same education and/or skills can be attained from a different provider at a more reasonable cost.

These guidelines ensure Trade Act funding caps sufficiently cover the reasonable cost of training in all localities and ensure that NYSDOL's Trade Act allocation allows the maximum number of entitled customers to receive training assistance that will lead to a reasonable expectation of employment upon completion.

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TRADE ACT COMMUTING PARAMETERS

Commuting Area

Effective April 27, 2021, New York State (NYS) defines the commuting area as travel up to 30 miles from the participant's primary residence, one way, by personal vehicle.

For participants that rely almost exclusively on public transportation, the commuting area is defined as travel up to one hour, one way, by public transportation.

Travel outside these defined commuting areas may make Trade Act participants eligible for a transportation payment/travel allowance.

Transportation payments/travel allowance, outlined in 20 CFR §618.640 (d), indicate that transportation payments/travel allowance funded by the TAA Program are only payable for actual days traveled, starting with the first miles outside the commuting area.

Example – Calculating Reimbursement for a Transportation Payment/Travel Allowance

As defined above, the commuting area is the area within 30 miles of the Trade Act participant's residence. If the training provider is located 40 miles from the Trade Act participant's home, NYSDOL would reimburse the participant for the 10 miles traveled outside the commuting area and the 10 miles of the return trip, for a total of 20 miles to be reimbursed.

Mileage will be reimbursed at the prevailing federal mileage rate.

TRADE ACT PROCESS FLOW			
Activity	Comments	Local	State
Receive Petition/Trigger RR			X
Outreach (Direct contact to customers)	Emails, phone calls, letters, and more	X	X
Outreach (newspaper notices)	Legal notice of certification		X
Individual Eligibility Determination for TAA/TRA and Appeals			X
Assessment	All activities to determine customer need	X	
Career Counseling		X	
Job Development/ Placement		X	X
Enrollment in WIOA	Active job search; job development/ core services	X	
Staff Assisted Job Search	Job search workshop, job finding clubs	X	
Testing and Assessment	Appropriate assessments to measure aptitude, interest etc.	X	
Development of Employment Plan	Individual service strategy	X	
Request funds for Job Search and Relocation Allowance	Taking and submitting the application for a job search/relocation allowance	X	
Approve TAA Job search and Relocation Allowance	Approve requests for job search and relocation benefits/request funds		X
Deny requests for Job Search and Relocation Allowance	Issue determination and hearing rights		X
Case Management and Supportive Services	TAA – OSOS data entry and comments	X	
Issue Approved Training Waivers	State issues out of state waivers	X	X
Deny and Revoke Training Waivers			X
Development of Training Plans	OJT/Apprenticeship/ Classroom/Online training	X	
Approve Training Programs and Issue Determinations			X
Request TAA funds for training plan		X	
Issue Denial of Training Programs			X
Maintain Funding Availability/Indicate availability of funds for individual requests			X
RTAA	Determine individual eligibility and pay benefit		X
Compile PIRL for mandated federal reporting			X