

WIOA Guidance Letter 21-01



DATE: January 28, 2021
TO: LWDB Directors, OSOs, WIOA Service Providers, TAA Staff
FROM: Mike Beene, Director Workforce Services
CC: CRC, Workforce Services
RE: Co-Enrollment of Trade Impacted Workers

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Purpose: The purpose of this Guidance Letter Revision is to provide Local Workforce Development Boards (LWDBs) and Commerce staff guidance on integrating services under the Trade Adjustment Assistance (TAA) Program with the Workforce Innovation and Opportunity Act (WIOA) Title I Dislocated Worker (DW) Program. This Guidance Letter revision further expands on the Guidance Letter released on August 27, 2020.

References: Workforce Innovation and Opportunity Act (WIOA); 20 CFR Part 618; TEGL 4-20; State Policy #5-05-00; WIOA Guidance Letter 16-02

Background: The TAA Final Rule requires the co-enrollment of trade-affected workers with the WIOA DW Program in an effort to advance the Workforce System approach which integrates multiple programs in order to meet the needs of workers and businesses. The TAA Program provides assistance to workers who have been adversely affected by foreign trade with the mission to get trade-affected workers back to suitable employment as quickly as possible and at a reasonable cost. The DW Program is likewise designed to help dislocated workers overcome barriers to employment and return to work as quickly as possible.

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Co-Enrollment

The TAA Final Rule is codified at 20 CFR Part 618 and became effective on September 21, 2020. Section 618.325 mandates co-enrollment between the TAA Program and WIOA DW Program and strongly encourages co-enrollment in other programs to ensure coordinated services.

Most trade-affected workers meet the eligibility criteria of a dislocated worker defined at WIOA section 3(15). Workers may choose to decline co-enrollment in WIOA but cannot be denied TAA Program benefits or services solely for declining co-enrollment in WIOA. If trade-affected workers are ineligible for the WIOA DW program, including those that do not meet the Selective Service registration requirement, they are exempt from the co-enrollment requirement.

The early intervention of career services to trade-affected workers is an important step toward improving employment outcomes. There are TAA Program specific criteria that must be met if trade-affected workers are to take full advantage of the program; however, this does not prevent the immediate assistance from the WIOA DW Program. Local areas and Commerce TAA Program staff should coordinate services to address the needs of trade-affected workers and potential trade-affected workers immediately as soon as a notice of layoff is received. Examples of coordinated services include having joint Rapid Response events, providing information on both programs, and providing local labor market information.

As Local Workforce Development Boards (LWDBs) select providers of WIOA DW Program services in their respective local areas, it is incumbent on LWDBs to inform their DW Program service providers of this new co-enrollment requirement and to remind DW Program service providers that services (funded in whole or in part) beyond self-service or information only must be provided for an eligible individual to be considered a co-enrolled participant. One-Stop Operators (OSO) and/or LWDBs must assure partner MOUs and methods of referral between partners are in place and adequate to successfully implement co-enrollment of trade impacted workers.

Rapid Response

As local areas conduct Rapid Response activities, they should ensure that information on the TAA Program is a part of any presentation or informational materials. Services that would be beneficial to trade-affected and potential trade-affected workers include orientation; information on unemployment benefits; assistance in filing a petition for TAA or information about TAA benefits and services; worker surveys; initial assessment of skill levels, aptitudes, and abilities; the provision of labor market information; job search assistance; soft-skills instruction; and financial management workshops, among others.

Intake

Local areas should enroll potential trade-affected workers in WIOA DW prior to a TAA petition being certified. This will ensure the co-enrollment requirements in 20 CFR 618.325(a)(1) are met and services under WIOA DW can begin. If a TAA petition results in a negative determination or denial, the individual previously thought to be a potential trade-affected worker will not be eligible for TAA but would continue on in the WIOA DW Program and receive appropriate services that lead to employment.

Commerce TAA Program staff and WIOA DW Program staff should work together to establish a smooth linkage for co-enrollment during the intake process. This includes collecting the same required eligibility documents only once during intake, using applications to only collect program specific information that has not been previously collected but still needed to determine program eligibility, and using the same case management system for both programs (the functions of ServiceLink in KANSASWORKS.com should be fully utilized to avoid duplication).

Eligibility Documentation

The TAA Final Rule mandates co-enrollment between the TAA Program and WIOA DW Program if the worker is eligible. As with any program, documentation of that eligibility is required. The eligibility requirements as well as the data and documentation requirements for the WIOA DW Program can be found in State Policy #5-05-00 and WIOA Guidance Letter 16-02.

Source documentation that has been used to verify the eligibility of a worker for the WIOA DW Program should also be used to verify the eligibility of that same worker for the TAA Program, and vice versa. Documents that duplicate data already collected by a partner program should not be used. This applies to both data that is collected electronically through KANSASWORKS.com and data collected manually. Only that eligibility information which has not already been collected by the WIOA DW Program, and is determined essential to establishing TAA benefit eligibility, should be obtained when enrolling a worker in the TAA Program. Likewise, only that eligibility information which has not already been collected by the TAA Program, and is determined essential to establishing WIOA DW Program eligibility, should be obtained when enrolling a worker in the WIOA DW Program.

Assessments

Trade-affected workers must be given an initial assessment after they are determined to be individually eligible for the TAA Program as part of the intake process. Initial assessments completed under another program can and should be used when available. If the initial assessment does not include the information required for the TAA Program, then the TAA case manager must supplement the initial assessment with the required information in conjunction with the trade-affected worker.

Initial assessments may be informal or structured and include observable indicators for future service decisions. The initial assessment is not a comprehensive, specialized or diagnostic evaluation. Each local area should have established procedures for initial assessments as part of their provision of basic career services in the AJC. Local processes for initial assessments should be used and not duplicated. Case managers must include the results of the initial assessment when developing an Individual Employment Plan (IEP). Through the IEP, a strategy is developed to provide the worker with the services needed to quickly obtain employment.

The initial assessment must include an evaluation of the worker's skills levels which include literacy, numeracy and English language proficiency; aptitudes; abilities; and supportive service needs. Workers must be made aware of the advantages of receiving an initial assessment and also confirm that the worker may refuse an assessment, such as in cases where the worker already has a suitable job offer.

TAA Programs are also required to make available comprehensive and specialized assessments to all trade-affected workers. Trade-affected workers are not required to take advantage of comprehensive or specialized assessments as a condition of receiving further services unless the information to be gained is essential to proceeding.

The TAA Final Rule was aligned with WIOA in order to ensure assessments were not duplicated as this can increase efficiency.

Training

As trade-affected workers begin to formulate reemployment plans and require additional services, state and local staff should coordinate program resources to address the needs of such workers while maximizing the limited resources available within the system.

Costs of training programs can be paid with TAA funds or other sources such as the WIOA DW program. There must not be any duplication of training payment costs and TAA funds can only reimburse training costs incurred after a trade-affected worker was certified and determined individually eligible for the TAA Program, and that training must be TAA approved. Corresponding TAA regulations require the TAA Program be the primary source of assistance to trade-affected workers.

Training must be approved for a trade-affected worker if the TAA Program staff determines that all of the following criteria have been met:

1. There is no suitable employment available for the trade-affected worker
2. The trade-affected worker would benefit from appropriate training
3. There is a reasonable expectation of employment following completion of such training
4. Training is reasonably available to the trade-affected worker
5. The trade-affected worker is qualified to undertake and complete such training
6. Such training is suitable for the trade-affected worker and available at a reasonable cost

WIOA DW Program staff should be cross-trained and knowledgeable of the TAA criteria for training. This will ensure that during counseling sessions with potential trade-affected workers in need of training services, the TAA training criteria will be met.

Any initial assessment, comprehensive and specialized assessment, and IEP that has been developed must be consulted to support the trade-affected worker's ability to undertake and complete the training program.

Appeals Process

Determinations on TAA petitions are published in the Federal Register, the official daily publication for Rules, Proposed Rules, and Notices of Federal organizations. Aggrieved parties who are denied certification may request administrative reconsideration from the Office of Trade Adjustment Assistance (OTAA) by filing an Application for Reconsideration via form ETA-9185. Reconsideration requests must be filed with OTAA within 30 days of Federal Register publication and may be emailed, mailed or faxed to:

United States Department of Labor
Employment and Training Administration
Office of Trade Adjustment Assistance
Attn: Reconsiderations
Room N-5428
200 Constitution Avenue N.W.
Washington DC 20210

Phone: 202-693-3560 or 1-888-DOL-OTAA (1-888-365-6822)

Fax: 202-693-3584 or 202-693-3585

Email: reconsiderations.taa@dol.gov

Any persons wishing to file complaints of discrimination may file with State-Level Equal Opportunity Officer:

John Ybarra
Kansas Department of Commerce
785-296-5092
TDD 711
John.Ybarra@ks.gov

Or with the Directorate of Civil Rights, United States Department of Labor, 200 Constitution Avenue, NW,
Room N-4123, Washington, D.C. 20210

All other TAA program decisions may be appealed:

Office of Appeals
401 SW Topeka Blvd
Topeka, KS 66603
Fax: 785-296-4065

Questions or additional technical assistance should be directed to: workforcesvcs@ks.gov