

WORKFORCE SYSTEM POLICY

Co-Enrollment of Participants in the Trade Adjustment Assistance Program and Workforce Innovation and Opportunity Act Dislocated Worker Program

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Policy Owner: Bureau of Workforce Partnership & Operations

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Purpose of the Policy

This policy informs the Pennsylvania local workforce development system of the co-enrollment mandate of Trade Adjustment Assistance, or TAA, program participants with the Workforce Innovation Opportunity Act, or WIOA, Dislocated Worker program.

Policy Statement

The Employment and Training Administration of the U.S. Department of Labor, or USDOL, published a Final Rule implementing the TAA Reauthorization Act of 2015 on August 21, 2020, (85 FR 51896). 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 and WIOA Dislocated Worker programs and strongly encourages co-enrollment in other programs to ensure coordinated services for trade-affected workers. Subpart C, Employment and Case Management Services of the TAA Final Rule, describes the employment and case management services that states must make available to trade-affected workers, either directly through the TAA program or through arrangements with partner programs. The process to co-enroll the trade-affected dislocated workers should be aligned, flexible and simplified between program partners.

Scope

This policy applies to Local Workforce Development Boards and PA CareerLink® WIOA provider program partners.

Audience

This policy applies to any L&I state, state-merit, workforce system partner, or business partner staff who provide employment and case management services to trade-affected workers.

Related Policies

WIOA Performance Reporting

Definitions

Adversely Affected Worker, or AAW, is an individual, including an employer, who, because of lack of work in adversely affected employment, has been totally or partially separated from such employment.

Adversely Affected Incumbent Worker, or AAIW, is a worker who:

- A. Is a member of a worker group certified as eligible to apply for the TAA program;
- B. Has not been totally or partially separated from adversely affected employment; and
- C. The State Workforce Agency determines, on an individual basis, is threatened with total or partial separation.

Dislocated Worker is any adult 18 years and older who meets one or more of the following criteria:

- A. *An individual or small group layoff.* The Individual has been terminated or laid off, or has received a notice of termination or layoff, from employment; and is eligible for or has exhausted entitlement to unemployment compensation; or has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a state's Unemployment Insurance law; and is unlikely to return to a previous industry or occupation.
- B. *A permanent closure or mass layoff.* The individual has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise; or is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or for the purpose of eligibility to receive services other than training services, career services, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close.
- C. *Is self-employed.* The individual was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed because of general economic conditions in the community in which the individual resides or because of natural disasters. This includes individuals working as independent contractors or consultants but not technically employees of a firm.
- D. *Is a displaced homemaker.* The individual is a displaced homemaker.
- E. *Is a military spouse.* Is the spouse of a member of the Armed Forces on active duty, and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such members; or is the spouse of a member of the Armed Forces on active duty, and who is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.
- F. *Is separating or a separated member of the US Armed Forces.* A separated service member with a discharge other than dishonorable, qualifies for dislocated worker activities based on the following criteria:
 - o the separating service member has received a notice of separation, a DD-214 from the Department of Defense, or other documentation showing a separation or imminent separation from the Armed Forces to satisfy the termination or layoff part of the dislocated worker eligibility criteria in WIOA sec. 3(15)(A)(i);
 - o the separating service member qualifies for the dislocated worker eligibility criteria on eligibility for or exhaustion of unemployment compensation in WIOA sec. 3(15)(A)(ii)(I) or (II); and
 - o as a separating service member, the individual is unlikely to return to a previous industry or occupation as referenced in WIOA sec. 3(15)(A)(iii).

Individual Employment Plan, or IEP is an individualized career service, under WIOA sec. 134(c)(2)(A)(xii)(II), that is developed jointly by the participant and career planner when determined appropriate by the one-stop center or one-stop partner. The plan is an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of services for the participant to achieve the employment goals

State Workforce Agency, or SWA, is the agency at the State level authorized by the Governor that administers the State law.

Reemployment Trade Adjustment Assistance, or RTAA, is the TAA program benefit available to certain AAWs 50 years of age and older who obtain qualifying reemployment.

Supportive services are services such as transportation, childcare, dependent care, and housing, provided through WIOA or other programs, that are needed to enable an individual to participate in activities authorized under the Act.

Trade Adjustment Assistance, or TAA, is described in Chapter 2 of Title II of the Trade Act, Public Law 93-618, 88 Stat. 1978 (19 U.S.C. §§ 2271-2323 and 2395), as amended, which establishes the TAA for Workers program. The benefits and services established under the Act, including RTAA, are collectively referred to as the TAA program and provides assistance to workers adversely affected by foreign trade.

Trade-affected worker is used to describe both “adversely affected workers” and “adversely affected incumbent workers”.

Background

Co-enrollment of eligible TAA participants in the Dislocated Worker program is a proven tool for integrated service delivery. The program provides career training and supportive services, in addition to identifying barriers to reemployment, all of which are critical to trade-affected workers.

Based on data that states reported between FY 2009 and 2017, TAA program participants who were co-enrolled in the Dislocated Worker program had superior post-program employment results by a consistent margin than those who were not.

TAA program participants co-enrolled in the Dislocated Worker program have:

- Higher training participation (75 percent versus 51 percent for those not co-enrolled);
- Higher training completion rates (78 percent versus 71 percent for those not co-enrolled); and
- Higher credential attainment (73 percent versus 62 percent for those not co-enrolled).

As a result, recent amendments to the TAA program now mandate co-enrollment of TAA participants in the Dislocated Worker program.

Co-Enrollment Requirements

Trade-affected workers who are deemed eligible must be enrolled in the WIOA Dislocated Worker program. WIOA PA CareerLink® partners must consider this information when working with dislocated workers who are awaiting certification of a pending Trade petition and immediately after receiving referrals of trade-affected workers from the Bureau of Workforce Partnership & Operations, or BWPO, staff. Individuals are considered participants when they have received a WIOA service other than self-service or information-only activities.

Program enrollment, or participation, begins when the first value-added service is provided to a trade-affected dislocated worker in the Commonwealth Workforce Development System, or CWDS. Per Section 680.220 of the WIOA Final Regulations (USDOL-only), the first value-added service for a dislocated worker must be a basic career service or individualized career service. Note: If an individual is determined to be a dislocated worker, it does not mean that they are automatically considered to be enrolled into the Dislocated Worker program.

TAA funds must be the primary source of funding for eligible participants co-enrolled in WIOA and TAA. A complete description of payment restrictions for training programs is described in 20 CFR § 618.625.

Common Exit (Common Measures)

USDOL developed common measures to standardize performance guidelines across multiple programs and funding streams which are used to evaluate states and one-stop systems for effectiveness. Outcomes and results used by USDOL’s common measures directly impact all federally funded workforce development programs.

Pennsylvania operates under a common exit strategy for all reportable individuals. A common exit is when a participant, who is enrolled in multiple partner programs, has not received services from any of the partner programs for at least 90 days and no future services are planned. The core and non-core programs that use this strategy are Adult, Dislocated Worker, Youth, Labor Exchange and TAA.

The date of program exit is recorded as the last date that the participant received a service (other than self-services, information-only services or activities, or follow-up services) from any of the partner programs that are a part of the common exit strategy. For example, participants co-enrolled in Dislocated Worker and TAA and whose TAA case closes due to completion of all benefits and services can continue to receive services under Dislocated Worker. They will not exit under common exit strategy until 90 days have passed from the date of last service from the Dislocated Worker program, and no future services are planned. A way to ensure common measures is not artificially extended for an individual who is co-enrolled and who completes both programs at the end of training is to confirm the dates of training associated with the TAA training match the dates of training for the training service code applied by the WIOA Dislocated Worker program. This would also apply in an instance of early withdrawal from training. Both program partners' training service codes must be the same and should reflect the last day of participation in the training.

TAA Co-Enrollment Mandate and Dislocated Worker Eligibility

To ensure that all appropriate and necessary services are available, such as supportive services, a state must co-enroll trade-affected workers who are eligible for other one-stop partner programs. As defined in WIOA Section 3(15), the majority of trade-affected workers meet the eligibility criteria of a dislocated worker. Partially separated workers and AAIW's may meet eligibility criteria as a dislocated worker under WIOA in some circumstances, as in a general announcement of a closure. These workers also must be co-enrolled.

Trade-affected workers who do not meet the Selective Service registration requirement are ineligible for the WIOA Dislocated Worker program. In this instance, they will be exempt from the co-enrollment requirement. Trade-affected workers who are otherwise eligible for Dislocated Worker services may choose to decline WIOA co-enrollment, but a state cannot deny worker's benefits or services under the TAA program solely for declining co-enrollment in WIOA. A case progress note associated with the TAA case must be entered in CWDS for any trade-affected worker who chooses to decline enrollment.

Referral for Co-Enrollment

Co-enrollment consists of a referral to the Title I Supervisor who will distribute the caseload to a Title I case manager, even if trade eligibility has not yet been determined. Trade-affected workers must be informed of the co-enrollment process and give consent prior to the creation of the WIOA Dislocated Worker program case. To better serve workforce customers staff must inform trade-affected workers of the benefits to co-enrollment. Trade-affected workers must also be informed of their option to decline co-enrollment. A decision to opt-out of co-enrollment will have no effect on eligibility for benefits and services under the TAA Program. It is the responsibility of the TAA case manager and the Title I case manager to maintain lateral communication regarding the progress of the trade-affected worker. The process of co-enrollment referral must be included in each local workforce development area's local plan.

Assessments and Individual Employment Plans (IEP)

Staff should follow the policy of their local workforce development area/office regarding the assessment methods used. The same assessment that is used for other dislocated worker groups should also be used for TAA program participants. TAA program participants are dislocated workers, and, if necessary, should be administered the same assessment as all dislocated workers in a Local Workforce Development Area.

Program partners are encouraged to work towards integration by the acceptance of partners' assessments or IEPs, and the elimination of redundant assessment or IEP steps. The SWA recommends the adoption of common assessment(s) and IEP instruments that fulfill the requirements, needs and objectives of all partners.

If an assessment has already been administered by a partner program, it must be reviewed by a Career Advisor or merit staff once the dislocated worker is individually determined eligible for the TAA program to ensure it has the

required components for an initial assessment as described in 20 CFR § 618.335 and, if necessary, for a comprehensive and specialized assessment as described in 20 CFR § 618.345.

If an IEP has been previously created with a dislocated worker by a partner program, it must be reviewed once the dislocated worker is individually determined eligible for the TAA program to ensure the IEP is fully compliant with TAA program requirements as described in 20 CFR § 618.350.

Supporting Information and References

- Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113-128, 128 Stat 1425) (July 22, 2014);
- TAA Final Rule, 20 CFR Part 618, 85 FR 51896 (August 21, 2020);
- Chapter 2 of Title II of the Trade Act of 1974, as amended (Pub. L. 93-618, 88 Stat. 1978) (Trade Act) (codified at 19 U.S.C. §§ 2271 et seq.);
- WIOA Final Rule, 20 CFR Parts 680 and 687, 81 FR 56071 (August 19, 2016);
- Training and Employment Guidance Letter No. 4-20 - *Guidance on Integrating Services for Trade-Affected Workers under the Trade Adjustment Assistance Program (TAA Program) with the Workforce Innovation and Opportunity Act (WIOA) Title I Dislocated Worker Program.*

Contact Entity

Technical assistance requests and/or inquiries related to this policy should be forwarded to the attention of BWPO via the following resource account: RA-LI-BWPO-TRADE@pa.gov.

Public Comment

The following public comments and Pennsylvania Department of Labor & Industry, (L&I), responses were established from the posting of the Co-Enrollment of Participants in the Trade Adjustment Assistance Program and Workforce Innovation Opportunity Act, or WIOA, Dislocated Worker Programs policy for a public comment period commencing on Oct. 28, 2021 through Nov. 29, 2021. The policy provides guidance on the requirements of the co-enrollment mandate of Trade Adjustment Assistance, or TAA, program participants with the WIOA, Dislocated Worker program. Many of the concerns were incorporated into the proposed policy while other comments fall outside of the scope of policy and no changes were made. To respect and honor the stakeholders that submitted public comments that helped to inform the newly revised proposed policy, L&I is publishing the comments and responses below.

Comment: A commenter relayed appreciation for outlining the situations related to Selective Service requirements not being met and TAA participants who decline co-enrollment.

Response: L&I thanks you for your comment and validation.

Comment: A commenter noted that the policy “does not address a situation where a TAA participant is referred to WIOA Title I Dislocated Worker and the participant’s status is currently employed.” The commenter requested clarification of a condition where a dislocated worker’s eligibility for TAA co-enrollment is based on the status at the time of the dislocated worker’s eligibility determination. The commenter also requested clarification as to whether an employed TAA participant is eligible for the WIOA Title I Dislocated Worker Program.

Response: Thank you for your comment. Trade participants who have obtained reemployment and are referred to the WIOA Title I Dislocated Worker program for co-enrollment (such as those who are requesting the RTAA benefit under the TAA Program) meet the definition of dislocated worker and, therefore, are required to be co-enrolled. WIOA does not provide a deadline on the impact of a layoff.

Comment: A commenter suggested the addition of clarifying language included in the Co-Enrollment Requirements (page 3) and TAA Co-Enrollment Mandate and Dislocated Worker Eligibility (page 4) sections of the policy to more closely align with co-enrollment requirements as described in the US Department of Labor’s

Training and Guidance Letter (TEGL) 04-20. Specifically, both suggestions related to a trade-affected worker's eligibility as it relates to the WIOA Dislocated Worker program.

Response: The department values your comments and appreciates suggestions where an opportunity to improve language leads to a better understanding of policy among readers. In the two cases suggested for change, the policy was edited to include language directly from TEGL 04-20 as recommended.

Comment: A commenter suggested that the policy outline that "Trade affected workers must be informed of the co-enrollment process and give consent prior to the creation of the WIOA Dislocated Worker program case." The commenter encouraged the department to consider an "opt-out" approach to co-enrollment prior to the creation of a WIOA Title I Dislocated Worker Program case noting that "the opt-out process achieves an efficient process of having mandated co-enrollment while also giving the worker the choice to not participate in WIOA programming."

Response: Thank you for your comment. L&I recognizes the commenter's concern and added the following language to the Referral to Co-Enrollment section of the policy: "To better serve workforce customers staff must inform trade-affected workers of the benefits to co-enrollment. Trade-affected workers must also be informed of their option to decline co-enrollment. A decision to opt-out of co-enrollment will have no effect on eligibility for benefits and services under the TAA Program."

Comment: A commenter requested content be added to the policy to "maximize technology as part of the co-enrollment process" and specifically "the use of technology in cross-matching participant information across workforce programming (ex. UC, WIOA, Trade) to help streamline the dislocated worker eligibility process."

Response: Thank you for your comment. L&I acknowledges that as the commenter notes, the Pennsylvania Combined WIOA State Plan places an emphasis on the use of technology to improve service delivery and the commitment of the commonwealth to use technology to create easily accessible, streamlined services. However, the implementation and use of technology is a procedural component and not one of policy. No changes to the policy were made.

Comment: A commenter requested that the policy include activities planned to support local implementation in meeting the requirements of the policy. The commenter noted that in TEGL 04-20, the U.S. Department of Labor highlighted steps such as the cross-training of case managers and other staff, as well as appropriate funding for administrative, employment, and case management services for co-enrolled trade-affected workers.

Response: Thank you for your comment. L&I notes that while the commenter's points are valid and cross-training of staff members is important, the activities suggested are procedural in nature and fall outside of the scope of policy. No changes to the policy were made.

Comment: A commenter stated, "Regarding [*The process of co-enrollment referral must be included in each local workforce development area's local plan*], should there be some reference to referrals from BWPO/TAA staff using the CWDS 2.0 referral functionality to initiate and document the referral in the system of record?" The commenter suggested that this would promote initiation, acknowledgement and acceptance of the TAA referral to Title I staff in the system of record. Additionally, the commenter wrote that this process would preserve the timeline and allow for the referral(s) to be reflected on the CWDS 2.0 case manager's dashboard "My Program Referral(s) Received" tile as well, potentially promoting more timely response(s) to referrals.

Response: Thank you for your comment. The referral process is procedural in nature and outside of the scope of policy. This type of formal training would come directly from Trade Act Services or be included in the TAA Desk Guide. Currently, local staff record the referral in case progress notes and Trade Act Services verifies co-enrollment in CWDS. No changes to the policy were made.