Alabama Workforce Investment System

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GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO. PY2003-16

SUBJECT: Dislocated Worker Services Integration Forums - FAQ

1. **Purpose.** To transmit the document, "Frequently Asked Questions From Dislocated Worker Service Integration Forums".

2. **Discussion.** Early in 2004, the Department of Labor (USDOL) held a series of state and local forums designed to help program operators think through ways to better integrate services for dislocated workers. The attached information presents questions related to such service integration, along with a USDOL response to each question.

3. **Action.** This material is for informational and potential action purposes.

4. **Contact.** Any questions should be addressed to the USDOL Regional Office.

Steve Walkley, Division Director
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Attachments

FREQUENTLY ASKED QUESTIONS FROM DISLOCATED WORKER SERVICE INTEGRATION FORUMS

Early in 2004 the Department of Labor (DOL) held a series of state and local forums designed to help program operators think through ways to better integrate services for dislocated workers. The following information grows out of those forums and from questions which we continue to receive as a result of them.

Q&A Disclaimer

These Questions and Answers are provided as a public service by DOL. They represent an ongoing best effort to provide program operators with useful information in a timely manner. None of the following answers should be considered a statement of official policy until the Department has released it in a Training and Employment Guidance Letter (TEGL). Please check the list of officially issued TEGLS at http://www.doleta.gov to verify whether a particular answer has been issued as policy. Subsequent to this initial posting as of May 14, 2004, new questions/answers will be added as received and answered. They will be indicated with a date, so that readers can easily see which have been added since their last visit. If you have any questions regarding application of a Q&A to your particular circumstances, please contact your ETA regional office.

A. INTEGRATED SERVICES FOR DISLOCATED WORKERS

Q. A-1. How can states develop policies that integrate programs while different programs (i.e., WIA, TAA) have different governing mandates?

A. A-1. **Answer:** States already have a great deal of authority to integrate. It is often unrealized and underutilized.

Explanation: Different workforce investment statutes are created at different times under different circumstances, with different purposes by Congress. They do not always neatly and rationally align. That is not to say that improvements cannot be made, but conceptually, workforce investment programs constitute a mixed set of tools brought together (at the One-Stop level) with one constant theme. The theme is that a Governor, as chief executive of the state, is granted a certain level of authority to appoint, interpret, define and customize key features of workforce investment programs. The Department of Labor recognizes the importance of gubernatorial flexibility and is committed to helping states achieve maximum integration, economies of scale, and customer service within existing law, and to seek improvements in laws that have unintended or unforeseen consequences. It is important that states look for ways to manage programs effectively and utilize any flexibility that may currently exist to better serve dislocated workers.

Q. A-2. How does the workforce investment system determine which funding to use first for training when multiple sources of funding are available?

A.-A-2. **Answer:** There is no legislatively prescribed sequence of funding. Worker needs, eligibility and availability of dollars are the driving factors.

Explanation: Workforce investment (and related) program statutes that provide funds contain broad language designed to position a particular program as a resource of last resort (if other funding sources are otherwise available to be used first). This often makes for confusing and difficult implementation on the ground as program operators feel compelled to seek ways to use other dollars before using those which they control. In the case of dislocated worker program integration, here is a common sense way to view the issue:

WIA Formula Adult and Dislocated Worker dollars are the most plentiful among workforce investment funds. They have the broadest eligibility criteria. These most flexible dollars should be used first (although this is not required by law). Good integration planning views these dollars as the *context* which other programs can be used to supplement.

National Emergency Grant (NEG) and Trade dollars are special, event-triggered resources.

-*Trade dollars* are tied to a particular approved petition for a declining industry and can only be used in this situation. Individuals who qualify for help under Trade are usually a subset of the broader group eligible under the Adult or Dislocated Worker formula grant. For trade-certified dislocated workers, TAA funds are generally used first for the training needs of trade-certified dislocated workers if TAA training funds are available.

-*NEG funds* are tied to a particular national emergency or company- specific situation. Individuals who qualify for help under a NEG are usually a subset of the broader group eligible under the WIA Dislocated Worker formula grant program. Should WIA formula funds be insufficient to provide training or other employment-related services, a determination by a state should be made on whether to apply for NEG funds.

Q. A-3. Since there is confusion over a number of program issues (six criteria for qualifying for training under TAA fund utilization, co-enrollment, etc.), is there a federal plan to increase the training of professional staff at both the state and local levels on assistance to dislocated workers through WIA, NEG and TAA?

A. A-3. **Answer:** Yes.

Explanation: Now that the Dislocated Worker Forums held in each of the ETA Regions have been completed, we are planning more program specific training to address not only the issues raised in this question, but training on preparing and submitting NEG applications based upon the recently-published NEG application guidelines, published in the Federal Register on April 27, 2004, and TEGL 16-03 issued on January 26, 2004. The goal is to complete at least the first phase of this training by July 1, 2004, when the NEG e-applications will be required.

Additional training on the Trade Reform Act of 2002 covering such areas as the need for comprehensive assessments, the appropriate use of the six criteria required for entry into trade-approved training and other important aspects of the integration of dislocated worker services through the One-Stop Career Center system will be addressed.

We welcome any suggestions regarding training and what is specifically needed. Although we may not be able to address all needs by the July 1 date, it will provide us with your priorities for the next phases, and how the training can best meet the needs of state and local workforce investment partners.

Q. A-4. Should programs drive performance, or performance drive programs—and therefore funding?

A. A-4. **Answer:** Worker needs should drive everything. The satisfaction of worker needs (by the use of different program funding streams in order to be comprehensive) should result in performance, not be dictated by it.

Explanation: The array of services available through the workforce investment system is flexible and meant to be designed to fit the needs of individuals to help achieve the primary objective of all programs— a rapid return to employment in the context of the time needed by each individual. WIA, for example, permits a person to work while being re-trained to meet wage goals, an important strategy for many individuals. In addition, program performance standards are negotiable and renegotiable. We (federal, state and local government) must manage program design and performance requirements around the worker.

Q. A-5. If fund consolidation between the adult and dislocated worker programs is voted down in WIA reauthorization, what happens to the integration message?

A. A-5. **Answer:** Nothing. Integration of services through the One-Stop Career Center system for dislocated workers is not contingent upon the consolidation of adult and dislocated worker programs under WIA.

Explanation: Dislocated worker needs (and our responsibility to address them as effectively as possible) continue no matter what. Integration means working smarter. Without reauthorization as proposed, it will be harder to accomplish this, but we must.

Q. A-6. We have heard increasingly that an important customer in our system is or should be business. Yet, all of our discussions have focused on the dislocated worker. This double message is confusing.

A. A-6**. Answer:** You have not heard that business is *the* customer, but rather, that business is a customer in our system just as surely as workers are. While this seems self-evident (i.e., to be a successful worker one needs successful work), it has not been a major policy emphasis in the past.

Explanation: The training that the workforce investment system approves for the

dislocated worker and pays for with taxpayer dollars must meet the current and future needs of businesses in the local workforce investment areas across the country. In order for training to be "demand-driven" it must be conducted in concert with those that create the demand. Business is not just a partner, it is the ultimate consumer of workforce investment system output, providing the specifications against which we must train and validate our success by hiring. Program integration to more fully prepare workers for business-defined jobs now and in the future is perfectly consistent with meeting the needs of both customers.

Q. A-7. When will we be able to use dislocated worker funds with the original employer in order to avert layoffs?

A. A-7. **Answer:** You can do so now. But such use is limited.

Explanation: WIA currently authorizes using the funds reserved for "statewide" activities (up to 15% adult, dislocated worker and youth allotments) to serve *incumbent workers* (and there is wide flexibility in defining the term). States may decide to use a portion of any funds set aside for this purpose to address incumbent workers' needs, including layoff aversion. Rapid response funds (up to 25 percent) reserved by the state from its Dislocated Worker formula program allotment may be used to assist with developing plans to avert layoffs, as discussed in the WIA regulations, and defined in WIA Sec. 101(38) . Generally layoff aversion initiatives should be undertaken in collaboration with state and/or local economic development agencies, which frequently have training funds for complementary purposes. In addition, rapid response funds may be used to provide services under WIA Sec. 134(a)(2)(A)(ii) to individuals that qualify as dislocated workers under WIA Sec. 101(9) who have not yet been laid off but who have received a notice of layoff or closure.

B. TRADE PROGRAM

Q. B-1. Is there a "work-around" to allow an employer to pay for a laid-off individual's tuition without endangering his eligibility for allowances?

A. B-1. **Answer**: Yes, there is a process that has worked.

Explanation: Currently, the regulations prohibit the approval of any training program if the worker would be requested or required, at any time or under any circumstances, to pay any of the costs of a training program. Employers can pay for the full costs of training but a problem arises if this reimbursement becomes contingent (e.g., a passing grade). A "work around" that has been utilized involves obtaining a dual-enrollment NEG to supplement the employment-related assistance for these workers. As such, the state and the company can enter into an agreement where the employer tuition program will be used to pay the costs of training, but in cases where the participant is in TAA-approved training, and does not meet the employer's requirements for reimbursement, the NEG funds are used to cover the costs of the training rather than requiring the individual to repay the employer. This arrangement allows trade-certified workers to benefit from the company's training funds, while assuring that the individual's costs are paid under the TAA program.

Q. B-2. What is the interpretation of the standard language which prohibits using Trade Act funds for training "if other funding is available?"

A. B-2. **Answer:** TAA regulations specifically allow for the mixing of fund sources for payment of TAA-approved training; however, mixing must be done under a cost-sharing agreement with specific commitments from each program to pay the costs agreed to. Current TAA regulations governing restrictions on funding may be found at 20 CFR 617.25(b) (please see Question A2).

Explanation: The prohibition being referred to is actually a prohibition against duplication of payment. It says that if the costs of training are paid with TAA funds, no other payment for such costs of training may be made under any other federal law, and if the costs of training are paid with other federal funds, no other payment for such costs of training may be made with TAA funds. This does not mean that there is a prohibition on using TAA funds for training if, for example, WIA formula funds are available for the general eligible dislocated worker population. TAA funds should be used for training trade-eligible workers if there are TAA funds available since such funds are not available for dislocated workers who were not impacted by trade. The general population of eligible dislocated workers under WIA generally exceeds the number of trade-certified workers, and many local areas report limited funds budgeted to training. However, these are decisions made by workforce investment boards.

Q. B-3. What is ETA's position on over-obligating TAA training funds?

A. B-3. Federal funds that a state or grantee expects but have not yet been awarded cannot be obligated. State obligations in excess of the amount of Federal funds available are made at its own risk. Should additional funds covering the period when the obligations were incurred not be provided, some other source of funds would be needed to pay bills as they are received.

Q. B-4. There is a 70% WIA expenditure requirement in order to apply for a NEG. Is there the same restriction/requirement for a TAA petition?

A. B-4. **Answer:** There is no requirement that a 70% WIA expenditure exist to access TAA reserve funds.

Explanation: As outlined in TEGL 6-03, 75% of annual TAA funds are allocated according to a formula that is currently based on past TAA expenditures and the number of eligible workers served. The remaining 25% of annual TAA funds are held in reserve in the national office. The reserve funds are available only to states that have accrued expenditures [actual cash payments plus the cost of services or goods that have been received or are being provided (e.g., the cost of a semester of tuition that has not been paid but participants are in training)] of at least 50% of TAA funds provided each year.

Q. B-5. RE: Dual enrollment – We need a "work-around" in order to capture program success in WIA reporting when a TAA participant does not exit within 104 weeks.

A. B-5. **Answer:** Under the OMB common measures (to be implemented in calendar year 2004) a participant will not be reported for any program (in which they are co-enrolled) until after they have received their last service from all programs.

Explanation: TEGL 15-03, issued December 10, 2003, provided a new definition of the exit date to be used in reporting on participants in all training and employment programs under the common measures. For a participant in any program, the date of exit is the date on which the last service funded by the program or a partner program is received by the participant. Therefore, under the common measures, participants will not be reported for any program until after they have received their last service from all programs. Also note that trade training funds can provide up to 130 weeks of training (not just 104) if remedial training is involved, whereas there are no limits under WIA.

In the meantime, with separate TAA and WIA reporting systems, the integrated comprehensive individual employment plan which should address services being received under different programs (including WIA, Trade and Pell, for example), should support the time of exit for both the WIA and Trade programs after collaborative arrangements and agreements are in place in the local workforce investment area—perhaps the partnership MOU between the local board and the Trade program.

Q. B-6. How can OJT be authorized under TAA?

A. B-6**. Answer:** OJT has been and continues to be an allowable activity under TAA.

Explanation: The Trade Reform Act of 2002 revised requirements for OJT to mirror the requirements under WIA, which includes NEGs. Therefore, under a co-enrollment, for example, both WIA and TAA could be used to fund OJT for a worker. In order to do this, the training must be pre-approved by both TAA and WIA, or conducted under an agreement between the two programs.

Q. B-7. Shouldn't regional or local workforce investment boards be allowed to administer the Trade programs, to conform to WIA and other federal training programs?

A. B-7. Yes. A revised Secretary/Governor's agreement is being distributed to states that will make clear the latitude that workforce systems have in the delivery of TAA services.

Q. B-8. States operate the Trade program under an Agreement between the Governor and the Secretary of Labor (i.e., it is a state-run program). WIA is operated through a five-year plan with annual grants. To what extent do these differences inhibit or enhance the ability of states to integrate these two programs?

A. B-8. **Answer:** The Department does not believe that the funding mechanisms either enhance or inhibit the integration of the Trade and WIA Dislocated Worker programs.

Explanation: Both the Trade and WIA formula programs operate under Governor-Secretary agreements. The state is the grantee for both the Trade and WIA formula

allotments/grants, although under WIA the local workforce investment boards have clear policy and oversight responsibility over funds allocated by states to local workforce investment areas.

C. TRADE – HCTC

Q. C-1. When a SWA (state workforce agency) representative calls the IRS HCTC (Health Coverage Tax Credit) Customer Contact Center, the CS Representative asks for the name, address, etc. of the SWA and Trade worker. After gathering all of that information, the SWA is often told that they cannot answer the question because of IRS privacy restrictions. Why do they ask for all of the SWA information in the first place?

A. C-1. **Answer:** In order to protect individual's privacy, the IRS enforces strict security procedures. Certain types of information can only be shared with the individual to which the information belongs or a third party designee.

Explanation: The Customer Service Representatives (CSRs) are trained to gather general information from each caller. This is to assist the HCTC Customer Contact Center in tracking callers' requests and questions and helps them create a case for escalation of the request to the HCTC State Liaison Team. When calling the HCTC Customer Contact Center, a SWA representative should identify himself/herself as a "stakeholder from XXX agency." If the representative is calling for the first time as a "stakeholder from XXX agency," the CSR will record all of his/her contact information. Then the next time the representative calls and identifies himself/herself as a "stakeholder from XXX agency," the CSR will be able to pull up the file and the information will be listed for the CSR to view.

Q. C-2. Is the SWA responsible for notifying the IRS of an individual's ineligibility in the following scenario? An individual is determined TAA eligible and was certified for Unemployment Insurance (UI) /Trade Readjustment Allowance (TRA) weeks that create potential HCTC eligibility. The individual then claims HCTC. Subsequently, it is determined that the individual had earnings that were not considered in determining the UI/TRA payments, and the individual really was not eligible for UI or TRA. Should the SWA notify the HCTC program when an individual's TAA/ATAA eligibility has been reversed for previous months?

A. C-2. **Answer:** Yes.

Explanation: The SWA is responsible for notifying the HCTC Program of any subsequently determined weeks of UI/TRA ineligibility--provided there are no other UI/TRA weeks that fall within the month in which the individual is otherwise eligible for UI/TRA. If the individual's HCTC eligibility should be reversed, the SWA should create a record (as instructed in UIPL 24-03) and transmit it over the ICON.

Q. C-3. Is the SWA or the IRS responsible for determining the eligibility of TAA individuals for HCTC?

A. C-3. **Answer:** For HCTC, the IRS is responsible for making the determination.

Explanation: Such determination is based upon (1) the information it receives from the SWA vis-à-vis an individual's eligibility for TRA (or would be eligible for TRA if UI had been exhausted), and (2) the determination that the health plans available in a state (and for which an individual applies) meet the requirements for qualified health plans pursuant to the Trade Act of 2002. Therefore, the accuracy and timeliness of ICON transmissions on a daily basis by the SWAs to the IRS are critical.

Q. C-4. Is the SWA responsible for determining whether specific insurance plans meet the requirements for "eligible plans" for the purposes of HCTC under the Trade Reform Act of 2002?

A. C-4. **Answer:** No.

Explanation: The IRS and DOL are responsible for making that determination in concert with the state insurance agency and other entities.

D. WIA NATIONAL EMERGENCY GRANT (NEG)

Q. D-1. How does worker survey data contribute to the decision of the award level for NEGs?

A. D-1**. Answer:** Worker survey data are a primary information source for validating the number of planned participants as a subset of the number of eligible workers.

Explanation: Each NEG application identifies the eligible dislocation event that qualifies for NEG funds, the number of workers affected, the date when the layoff(s) will occur and the number of workers expected to need employment-related assistance with NEG funds. NEG resources are limited and must be targeted to needs, and survey data help to demonstrate what is needed by the workers. For disaster grants, the employment-related component must include information on the number of participants that require assistance. Survey data help to demonstrate the needs of the workers.

Q. D-2. What is the process for submission and approval of a modification?

A. D-2. **Answer:** Currently, all modifications must be submitted on paper or e-mail (or fax) to the ETA Grant Officer for NEG projects. Once the e-application is approved for all NEG processes, grantees will be required to submit all modifications via the electronic system to both the Regional and National Offices of ETA.

Explanation: To avoid delays in processing, all modification requests should be submitted to the ETA Grant Officer who signed the award letter, as well as to the Regional Federal Project Officer (FPO) identified in the award letter. Modification requests will be

processed within 30 working days.

Specific requirements for different types of modifications are detailed in the NEG guidelines, which were published in the Federal Register on April 27, 2004. If there are any questions in this regard, the grantee should contact the FPO for the particular project (identified in the grant award letter, or subsequent communication). The FPO will consult, as appropriate, with the Grant Officer and respond to requests.

Q. D-3. What is the process for submission and approval of a "no new money" modification?

A. D-3. **Answer:** The same process is used for all modification requests, as discussed in D-2, above.

Explanation: "No new money" modifications generally mean that a grantee does not require additional NEG funds but is requesting to extend the period of operation of a project, or make some other technical change that is significant enough to warrant a modification. If previously-awarded NEG funds are to be used for the requested extension, it must be determined that such funds are eligible for expenditure during the proposed timeframe, i.e., program year of award plus two subsequent years.

E. NEG/TRADE DUAL-ENROLLMENT PROJECTS

Q. E-1. For a dual enrollment NEG, is the emphasis on funding for assessment, counseling, etc., or for training?

A. E-1**. Answer:** As explained in TEGL 16-03, dual enrollment grants serve two purposes: (1) provide funding for projects identified as single or multi-company layoffs of more than 50 workers each and where DOL has determined that workers were trade-impacted, in order to provide comprehensive assessment, case management, child care and other services not available under TAA; and (2) provide training funds when TAA training funds (including reserve funds) and WIA formula funds are not sufficient to cover required training.

Q. E-2. We need a "work-around" for NEG dual enrollment projects in order to capture program success in WIA reporting when a TAA participant does not exit within 104 weeks. This question also applies to NEG-WIA formula co-enrollments.

A. E-2. **Answer:** Please see FAQ B-5, above. The exit from WIA occurs when all planned partner program services are completed, including job development, after training is completed or is nearing completion to limit the period between completion of training and employment.

Q. E-3. What is the purpose of a Dual Enrollment NEG when (a) all Trade participants

should be co-enrolled in WIA, and (b) there is a requirement that Trade funds be expended or at least obligated in the year of allocation?

A. E-3. **Answer:** First, we should be clear that there is no "requirement" that Trade funds be expended or obligated in the year of allocation. However, it is strongly encouraged that states expend this year's funds for this year's need. The NEG "dual enrollment" project is an administrative term for the identification of a specific type of NEG application that may be submitted. All participants served in NEG dual enrollment projects must be eligible for both TAA and WIA and be a member of the target population for a particular NEG. TEGL 16-03 dated January 26, 2004, Para. 4.a.(5) discusses dual enrollment projects and application requirements in more detail.