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AWI Communiqué

DATE: January 13, 2010

TO: Workforce Florida, Inc., and Regional Workforce Boards

FROM: Lois A. Scott, Program Manager, One-Stop and Program Support

SUBJECT: Limitations on the use of training caps under the Trade Act of 1974, as amended

PURPOSE:

To provide clarification of federal guidance regarding limitations on the use of training caps for trade-affected workers to Regional Workforce Boards and other entities engaged in implementing federal and state workforce programs under the Trade Act of 1974, as amended.

BACKGROUND:

As described below, federal guidance has consistently banned requiring an eligible trade-affected worker to use personal funds to cover training costs for suitable training. Consequently, training caps that are set at a fixed amount or a percentage of training costs and do not cover all of the training costs are not permitted under the Trade Act of 1974, as amended, and federal regulation and guidance.

The Trade Act of 1974 as amended requires that if a trade-affected worker under a certification meets all six criteria listed in Section 236(a)(1), the training shall be approved. The statutory criterion that is the subject of this Communiqué considers whether the "*training is… available at a reasonable cost.*"

In interpreting the statutory language, the United States Department of Labor (USDOL) promulgated rules codified at 20 CFR 617. Section 617.22(a)(6)(iii)(A) defines training costs as including "*tuition and related expenses (books, tools, and academic fees), travel or transportation expenses, and subsistence expenses*."

The statute adds: "*Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on the worker's behalf*."

20 CFR 617.22(h) provides that, "*In no case shall an individual be approved for training under this subpart C for which the individual is required to pay a fee or tuition.*" This is further clarified in 20 CFR 617.25(b)(1)(iii) which specifically prohibits the use of "*funds from sources personal to the individual, such as self, relatives, or friends.*"

With the Trade and Globalization Adjustment Assistance Act of 2009 (2009 Amendment), Congress codified and extended the restriction on the use of personal funds by adding subsection 236(a)(9)(B)(ii), which states: "*In determining the reasonable cost of training under paragraph (1)(f) with respect to a worker, the Secretary may consider whether other public or private funds are reasonably available to the worker, except that the Secretary may not require a worker to obtain such funds as a condition of approval of training under paragraph (1)*."

The USDOL provided guidance for implementing the new statutory requirement contained in Training and Employment Guidance Letter (TEGL) 22-08, section D.5.2 Reasonable Cost (page A-37). In the TEGL, the USDOL does not prohibit the limited use of training caps on the amount of training costs a State considers reasonable. However, the TEGL points out several relevant points that need to be considered when establishing a training cap:

- All costs of training must be included (thus a training cap cannot be arbitrarily set that fails to cover all the costs of suitable training).
- To determine reasonable costs, priority must be given to the lowest cost training available within the commuting area.
- More expensive training may be approved if it is of demonstrably higher quality or may be expected to produce better results in quickly returning the worker to suitable employment.
- Out-of-area training should be provided if the training is not reasonably available within the commuting area.
- There must be a mechanism for exceeding the training cap when that results in the most reasonable and cost effective way of returning the trade affected worker to sustainable employment.
- Caps must be sufficient to cover the reasonable cost of suitable training for high growth, demand, and green occupations.

The TEGL further specifies that it is appropriate for individuals to volunteer to use public or personal funds to pay for approved training in a situation when the training may be denied because the cost is not reasonable; or when the training exceeds the allowable duration under the Trade Act (in which case, the case manager must examine on the front end the worker's ability to pay for the training after TAA support ceases.)

REFERENCES:

Trade Act of 1974 as amended, 19 USC 2771, et seq., Code of Federal Regulations, Volume 20, Part 617, Trade Adjustment Assistance for Workers under the Trade Act of 1974., Trade and Globalization Adjustment Assistance Act of 2009, Public Law 111-5 (TGAA), and Training and Employment Guidance Letter (TEGL) 22-08, issued May 15, 2009: Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009.

AUTHORITY:

United States Department of Labor

ACTION REQUIRED:

RWBs that have imposed training caps across all workforce programs must revise their policies with respect to training for trade-affected (TAA) workers under a trade certification to ensure that they conform to federal requirements. This may require removing caps on training for trade-affected workers in an approved training program.