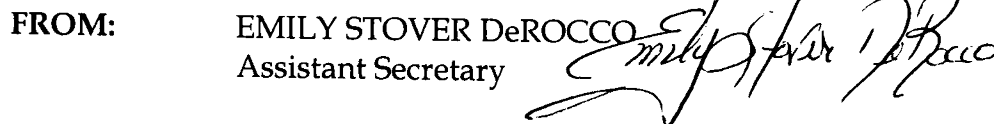
EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA/NAFTA-TAA CORRESPONDENCE SYMBOL ONR DATE February 2, 2006

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 13-05

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE LIAISONS
ALL STATE TRADE COORDINATORS

FROM: EMILY STOVER DeROCCO
Assistant Secretary



SUBJECT: Serving Participants under the Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA) Programs

1. **Purpose**. To clarify the Department's existing policy on serving participants, including those with limited English proficiency, under the TAA and NAFTA-TAA programs.

2. **References**.

- Trade Adjustment Assistance Act of 1974 (Public Law 93-619), as amended
- Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107-210)
- General Administration Letter, (GAL) No. 15-90, "Operating Instructions for Implementing the Omnibus Trade and Competitiveness Act of 1988
- Amendments to the Trade Adjustment Assistance Program, Including Significant Changes Affecting Basic and Additional TRA Entitlement," dated August 21, 1990
- Training and Employment Guidance Letter (TEGL) No. 11-02, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002," dated October 10, 2002
- Training and Employment Guidance Letter (TEGL) No. 26-02, "Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons," dated May 29, 2003

RESCISSIONS None	EXPIRATION DATE: Continuing

3. **Background.** Questions have arisen concerning how training is provided for workers, including those with limited English proficiency, under the TAA and NAFTA-TAA programs. This TEGL is intended to clarify the Department's existing policies related to the selection and approval of training programs for workers, including those with limited English proficiency.

4. **Training.** Training is approved under the TAA and NAFTA-TAA programs for adversely affected workers when all of the criteria for training approval at 20 CFR 617.22 are met. Under 20 CFR 617.22(a)(1) training is only available to workers for whom there is no suitable employment available. Suitable employment is defined for this criterion as "work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage."

   a. **Training goal**. The goal of the program is to return workers to "suitable employment" at work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage. This is a worthy goal.

   Accordingly, state agencies must make every effort to achieve this goal by providing an appropriate combination of reemployment services, training, and job search and relocation allowances where there are suitable employment opportunities that are feasible and appropriate for the worker to pursue. These efforts must include the appropriate training of case management workers. However, there is no guarantee that such suitable employment opportunities will be available to every worker, or that training targeted to an occupation where there is a reasonable expectation of suitable employment will actually result in employment at a wage of at least 80 percent of the participant's previous wage.

   Section 617.22(a)(3) of 20 CFR explains that "a reasonable expectation of employment" does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training. There only must be a reasonable expectation of employment following training and, under 20 CFR 617.22(a)(2), the training must benefit the worker. In recognition of the limitations of local labor markets and the limitations on the training that is available under the TAA and NAFTA-TAA programs, the Department encourages states to use all available resources to achieve the best possible outcome for the individual worker.

Workers who qualify for Trade Act training must be told of the 80 percent wage replacement goal and provided general information about available training programs, including access to labor market information, wage replacement information and web sites which may inform participants of the types of training available. Case files must contain sufficient documentation to demonstrate that all these requirements have been satisfied.

By the above, the Department encourages states to use all available resources to achieve the best possible outcome for the individual worker. Thus, as long as the state agency has determined that the approved training meets all requirements of the Trade Act and regulations, including the requirement that the training be available at a reasonable cost, a worker has a right to choose to enroll in higher cost training for an occupation that is more likely to meet the wage replacement goal of the Trade Act even when lower cost training in another occupation that does not meet this goal is also available to the worker.

However, none of the six training approval criteria limit the approval of training to training programs which result only in suitable employment. Such a requirement would have the effect of requiring training to be denied where a worker could not reasonably be assured of an offer of a job providing an 80 percent wage replacement upon completion of training. Further, it is not always feasible to train workers for suitable employment. There may be no suitable employment available for a worker or any employment that would meet the definition of suitable employment may require more education or experience than may be provided under the TAA or NAFTA-TAA programs. Therefore, the Department recognizes that a return to suitable employment is only a goal, and not a requirement for approval of training.

b. **Training completeness.** Under 20 CFR 617.22(a)(2), no Trade Act training program may be approved unless it will render a "worker job-ready." Therefore, any training program approved must be a program that provides the skills necessary to return the participant to work when the former employment is no longer available. Before any training is approved, each worker's case file must identify what occupation the worker is being trained to enter.

In the case of participants with limited English proficiency, this may be achieved through (1) a contextualized training program which simultaneously provides the necessary occupational skills and remedial education (basic skills and/or English language skills) in an integrated curriculum; (2) a combination of remedial education (including basic education and English language skills) and occupational skills training; or (3) in rare instances, through a stand-alone remedial education program if the individual possesses marketable occupational skills and only needs basic and/or English language skills to gain employment. As the Department stated when it published 20 CFR 617.22, "training designed to enhance the employability of individuals by upgrading basic skills, through

remedial education or English-as-second-language courses, are considered as remedial education approvable under § 617.22(a) if all the approval criteria in that section are met. A training program of remedial education only may now be approved for an individual if he or she possesses occupational skills and needs only remedial education to obtain employment. Ordinarily, remedial education is made part of a broader skills training program as defined in § 617.22(f)(3)." Therefore, stand alone remedial education may only be approved where an assessment indicates that the individual, but for remedial education, possesses marketable job skills.

c. **On-the-job training**. The TAA regulations, 20 CFR 617.23(c)(1), require each state agency to give priority to the use of on-the-job training (OJT). Thus, state agencies must take reasonable actions to develop on-the-job training opportunities for trade-affected workers by promoting the benefits of OJT under the TAA and NAFTA-TAA programs among local employers, and to present OJT to trade-affected workers as a first option, if available.

d. **Informed choice**. State agencies must provide information, as necessary, to each trade-affected worker to enable that worker to make an informed choice among approvable training options, regardless of the worker's language or educational abilities. Informed choice must be based upon a completed assessment of pre-training skills that is included in each worker's case file. Each time a worker's education and language abilities are limited, careful case management at the training selection and approval stages, and while training is underway, are essential to successful completion of training.

e. **Training program development**. Under 20 CFR 617.22(a)(4), approved TAA training must be reasonably available from either governmental agencies, education providers or private training providers. It is not an appropriate use of Trade Act funds, training or administrative, to pay for the development of a training provider or program, curriculum development, teacher training or physical plant needs. A training provider can recoup such costs as part of a reasonable tuition payment.

5. **Action**. States should make all appropriate staff aware of the contents of this TEGL and take appropriate measures to ensure appropriate provision of TAA and NAFTA-TAA services to individuals with limited English proficiency.

6. **Inquiries**. Inquiries regarding these instructions should be directed to the appropriate Regional Office.