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**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER WIOA NO. 19-16
OPERATING GUIDANCE for the WORKFORCE INNOVATION AND
OPPORTUNITY ACT**

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
LABOR COMMISSIONERS
AMERICAN JOB CENTERS

FROM: BYRON ZUIDEMA /s/
Deputy Assistant Secretary

SUBJECT: Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act Employment Service (ES), as amended by title III of WIOA, and for Implementation of the WIOA Final Rules

- Purpose.** To provide guidance to the workforce system on delivering services under the Adult and Dislocated Worker programs under WIOA Title I, and individuals served by the ES program, as amended by WIOA Title III, under the WIOA Final Rule.

WIOA, signed into law on July 22, 2014, supersedes titles I and II of the Workforce Investment Act of 1998 (WIA) and amends the Wagner-Peyser Act of 1933 and the Rehabilitation Act of 1973. In general, WIOA took effect on July 1, 2015, the first full program year after enactment, unless otherwise noted. On August 19, 2016, the Departments of Labor (DOL) and Education published the WIOA Final Rules in the Federal Register. The DOL-only rule became fully effective on October 18, 2016, 60 days after it was published on the Federal Register.

In order to continue implementation of WIOA prior to publication of the final rule, DOL issued a Training and Employment Guidance Letter (TEGL) 3-15, on July 1, 2015, which provided guidance to the public workforce system on delivering services to adults and dislocated workers under WIOA. This TEGL rescinds TEGL 3-15, and provides updated guidance to the public workforce system on service delivery to adults and dislocated workers, consistent with WIOA and the WIOA Final Rules. The section of the final rule pertaining to services for adults and dislocated workers under WIOA title I can be found at 20 CFR part

RESCISSIONS TEGL 3-15	EXPIRATION DATE Continuing
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680. The sections of the final rule pertaining to individuals served under the Wagner-Peyser Act programs, as revised, can be found at 20 CFR parts 651, 652, 653 and 658.

2. **References.** See Attachment I.
3. **Background.** WIOA provides for a workforce system that is accessible to all job seekers, customer centered, and training that is job-driven. The workforce system delivers career and training services at the nation’s nearly 2,500 American Job Centers. The Adult, Dislocated Worker, and ES programs provide training and employment services in the American Job Center network, and are required partners under the law. Under WIOA, partner programs and entities that are jointly responsible for workforce and economic development, educational, and other human resource programs, collaborate to create a seamless customer-focused American Job Center network that integrates service delivery across all programs to make it easier for workers to access the services they need to obtain skills and employment.

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4. **Career Services.** WIOA authorizes career services for adults and dislocated workers. There are three types of career services: basic career services, individualized career services, and follow-up services. The provision of individualized career services must be based on the employment needs of the individual as determined jointly by the individual and the career planner (case manager), and may be identified through an individual employment plan (IEP). Although WIOA distinguishes levels of service, this distinction is not intended to imply that there is a sequence of services. These services can be provided in any order. Career services

under this approach provide local areas and service providers with flexibility to target services that meet the needs of the customer, while still allowing for tracking of outcomes for reporting purposes. Career Services are defined in 20 CFR 678.430, and rules governing their provision to adults and dislocated workers are discussed in 20 CFR 680.100 through 195.

The three categories of career services are as follows, and are further defined in TEGL 16-16 “One-Stop Operations Guidance for the American Job Center Network”.

Basic Career Services

Basic career services are universally accessible and must be made available to all individuals seeking employment and training services in at least one comprehensive American Job Center per local area. Generally, these services involve less staff time and involvement and include services such as: eligibility determinations, initial skill assessments, labor exchange services, provision of information on programs and services, and program referrals. These services may be provided by both the Adult and Dislocated Worker programs, as well as by the Employment Service.

Individualized Career Services

Individualized career services must be provided to participants after American Job Center staff determine that such services are required to retain or obtain employment, consistent with any applicable statutory priorities. Generally, these services involve significant staff time and customization to each individual’s need. Individualized career services include services such as: specialized assessments, developing an individual employment plan, counseling, work experiences (including transitional jobs), etc.

Local Workforce Development Boards (WDBs) must identify the assessments to be used to determine eligibility, and ensure eligibility determination procedures are consistent with state policies. American Job Center staff may use recent previous interviews, evaluations, or assessments by partner programs to determine if individualized career services would be appropriate. These services generally will be provided by the Adult and Dislocated Worker programs, although it may be appropriate for the Employment Service to provide some of these services.

Follow-up Services

States and local areas must provide follow-up services for adults and dislocated worker participants who are placed in unsubsidized employment, for up to 12 months after the first day of employment. States and local areas must establish policies that define what are considered to be appropriate follow-up services, as well as policies for identifying when to provide follow-up services to participants. One type of follow-up service highlighted in WIOA is to provide individuals counseling about the work place. Follow-up services do not extend the date of exit in performance reporting; for more information on performance reporting see TEGL 10-16.

5. **Transitional Jobs.** Transitional jobs are a type of work-experience Local WDBs may provide under WIOA and are considered an individualized career service. Transitional jobs are time-limited and wage-paid work experiences that are subsidized up to 100 percent. These jobs are in the public, private, or nonprofit sectors and are only available for individuals with barriers to employment who are chronically unemployed or have an inconsistent work history, as determined by the Local WDB. Transitional jobs provide an individual with work experience that takes place within the context of an employee-employer relationship, in which the program provider generally acts as the employer, and with an opportunity to develop important workplace skills. The WIOA Final Rule governs the requirements for transitional jobs at 20 CFR 680.190 and .195.

This service must be combined with career and supportive services. These jobs must be designed to establish a work history for the individual, demonstrate success in the workplace, and develop the skills that lead to entry into and retention in unsubsidized employment. Unlike on-the-job training (OJT), there is no requirement that the employer retains the individual upon completion of the transitional job; however, retention, where appropriate, is preferred for the benefit of the worker and employer. Under section 134(d)(5) of WIOA and 20 CFR 680.195 of the Final Rule, Local WDBs may use up to 10 percent of their combined total of adult and dislocated worker funds to provide transitional jobs to individuals. For example, if a local area receives \$1.5 million in adult funds and \$1.0 million in DW funds, the Local WDB may use up to \$250,000 (10% of the total) for transitional jobs.

If the Local WDB uses transitional jobs as part of its service delivery strategy, it must adopt policies and identify appropriate employers (public, private, or nonprofit). Additionally, these policies must include plans on the amount of reimbursements for the jobs (up to 100 percent of the wage), what supportive services must be included, and the limits on the duration of the transitional job. If states and Local WDBs choose to use transitional jobs as a strategy, they must develop policies for defining and identifying individuals who are “chronically unemployed” or “have an inconsistent work history”. The Department encourages targeting individuals who are long-term unemployed, ex-offenders, and individuals who are currently receiving or have exhausted TANF benefits when developing these policies. Additionally, the Department encourages utilizing job readiness training in combination with transitional jobs if determined appropriate by the Local WDB.

6. **Career Services provided by ES staff.** Labor exchange services, which are the primary services provided by ES staff, fall under the basic career services discussed in Section 4 of this TEGL. Additionally, all of the basic career services must be made available by ES staff in coordination with other American Job Center partners. ES staff may also make available the individualized career services discussed in Section 4 of this TEGL, and the Department encourages states to make these services available, particularly for those individuals with barriers to employment, such as the long-term unemployed, as defined in WIOA sec. 3(24). The WIOA Final Rules discuss career services provided by the ES program in 20 CFR 652.206 and 208.

ES staff members also have specific obligations in serving unemployment insurance (UI)

claimants and carrying out components of the state's UI program, which include:

- Coordination of basic career services, particularly labor exchange services;
- Targeting UI claimants for job search assistance and referrals to employment;
- Administering state UI work test requirements, including, obtaining/documenting relevant information for eligibility assessments and providing job search assistance and referrals to employment;
- Provision of referrals to and application assistance to UI claimants for training and education resources and programs, including but not limited to Pell Grants, GI Bill, Post 9/11 Veterans Educational Assistance, WIOA, higher education assistance, and Vocational Rehabilitation;
- Outreach, intake (including identification through the state's Worker Profiling and Reemployment Services system of UI claimants likely to exhaust benefits and related programs, such as the Reemployment Services and Eligibility Assessment program), and orientation to information and other services available through the American Job Center network;
- Provision of information and assistance regarding filing claims under UI programs, including meaningful assistance to individuals (including individuals with language or other program access barriers) seeking assistance in filing a claim—
 - Meaningful assistance means providing assistance:
 - In the American Job Center(s), using staff who are well trained in UI claims filing activities and on the rights and responsibilities of claimants, and information necessary to file a claim, or
 - By phone or via other technology, such as live web chat and video conference, as long as the assistance is provided by appropriately-trained and available staff and within a reasonable time;
 - Technology-based approaches to providing meaningful assistance must ensure American Job Center customers have access to appropriately trained staff within a reasonable time. The referral of American Job Center customers to the state UI agency's self-service website or public phone line where the individual is placed into a queue with all other claimants is not meaningful assistance;
 - The cost associated in providing meaningful assistance may be paid for by the State's UI administrative funding, the WIOA Adult or Dislocated Worker programs, the ES program, or some combination of these funding sources.

7. **Training Services.** Training services can be critical to the employment success of many adults and dislocated workers. Training services are governed by sections 20 CFR 680.200 through .230 and 20 CFR 680.300 through .350 of the WIOA Final Rule. American Job Center staff may determine training services are appropriate, regardless of whether the individual has received basic or individualized career services first, and there is no sequence of service requirement.

Under WIOA, training services may be provided if the American Job Center staff, including partner programs' staff, determines after conducting an interview, an evaluation, or assessment, and career planning, that the individual:

- Is unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services alone;
- Is in need of training services to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment;
- Has the skills and qualifications to successfully participate in the selected program of training services;
- Is unable to obtain grant assistance from other sources to pay the costs of such training, including such sources as State-funded training funds or Federal Pell Grants established under title IV of the Higher Education Act of 1965, or requires WIOA assistance in addition to other sources of grant assistance, including Federal Pell Grants (20 CFR 680.230 and WIOA sec. 134(c)(3)(B) contain provisions relating to fund coordination.);
- Is a member of a worker group covered under a petition filed for Trade Adjustment Assistance (TAA) and is awaiting a determination. If the petition is certified, the worker may then transition to TAA approved training. If the petition is denied, the worker will continue training under WIOA;
- Is determined eligible in accordance with the State and local priority system in effect for adults under WIOA sec. 134(c)(3)(E) if training services are provided through the adult funding stream; and
- Selected a program of training services that is directly linked to the employment opportunities in the local area or the planning region, or in another area to which the individual is willing to commute or relocate.

Training services, when determined appropriate, must be provided either through an Individual Training Account (ITA) or through a training contract discussed in Section 8 of this TEGL. Except in certain instances listed in WIOA sec. 122(h) and 20 CFR sec. 680.320, training services must be provided by an Eligible Training Provider (ETP) in accordance with WIOA sec. 122(d). Training is available through a State Eligible Training Provider and Program List (ETPL), comprised of entities determined eligible to receive funds through WIOA title I, subtitle B, according to the Governor's eligibility criteria and procedure. As described in TEGL 41-14 (https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5816), the State ETPL ensures the accountability, quality and labor-market relevance of programs, and ensures informed customer choice for individuals eligible for training. WIOA also provides enhanced access and flexibility for work-based training options, such as Registered Apprenticeship (RA), on-the-job training, customized training, and incumbent worker training.

The list of ETPs must be made available to the Local WDB within the state by the State Workforce Agency (SWA), and to the participant by the Local WDB, in order to maximize consumer choice. The selection of training services should be conducted in a manner that maximizes customer choice, is linked to in-demand occupations, is informed by the performance of relevant training providers, and is coordinated to the extent possible with other sources of assistance, including Pell Grants (see WIOA sec. 134(c)(3)).

DOL encourages States and Local WDBs, where appropriate, to utilize previous assessments when making training determinations to reduce duplicate assessments and develop enhanced alignment across partner programs. This could include common intake forms across partner programs to encourage system alignment, reduce individual burden, and ensure customers greater access to programs based on their need. The provision of training services necessary to assist a participant in achieving his/her employment and/or training goals may be reflected in the IEP.

Types of training services that may be provided include:

- (a) Occupational skills training, including training for nontraditional employment;
- (b) On-the-job training;
- (c) Incumbent worker training (see Section 13 of this TEGL);
- (d) Programs that combine workplace training with related instruction, which may include cooperative education programs;
- (e) Training programs operated by the private sector;
- (f) Skill upgrading and retraining;
- (g) Entrepreneurial training;
- (h) Job readiness training provided in combination with the training services described in any of clauses (a) through (g) or transitional jobs;
- (i) Adult education and literacy activities, including activities of English Language acquisition and integrated education and training programs, provided concurrently or in combination with services provided in any of clauses (a) through (g); and
- (j) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

8. Training Contracts. Individual Training Accounts (ITAs) are the primary method to be used for procuring training services under WIOA, similar to the provision of training services under WIA. However, in certain circumstances, a training contract may be used to provide training services, instead of an ITA. These circumstances are referred to as the “training exceptions” or “contract exceptions”. Training contracts may only be used if at least one of the five circumstances listed below applies and the process for their use is described in the Local Plan. Additionally, the Local WDB must have fulfilled the consumer choice requirements of 20 CFR 680.340. Under section 134(c)(3)(G)(ii) of WIOA and consistent with 20 CFR 680.320, 680.340, and 680.530, states may use the contract exceptions as described below:

- On-the-job training, which may include paying for the on-the-job training portion of an RA program, customized training, incumbent worker training, or transitional jobs;
- If the Local WDB determines that there are an insufficient number of Eligible Training Providers in the local area to accomplish the purpose of a system of ITAs. This determination process must include a public comment period for interested providers of at least 30 days and must be described in the Local Plan;
- To use a training services program of demonstrated effectiveness offered in a local area by a community-based organization or other private organization to serve individuals with barriers to employment. The Local WDB must develop criteria to be used in

determining demonstrated effectiveness, particularly as it applies to individuals with barriers to employment to be served. The criteria may include:

- Financial stability of the organization;
 - Demonstrated performance in the delivery of services to individuals with barriers to employment through such means as program completion rate; attainment of the skills, certificates, or degrees the program is designed to provide; placement after training in unsubsidized employment, and retention in employment; and
 - How the specific program relates to the workforce investment needs identified in the local plan;
- If the Local WDB determines that the most appropriate training could be provided by an institution of higher education or other provider of training services in order to facilitate the training of a cohort of multiple individuals for jobs in-demand sectors or occupations, provided that the contract does not limit consumer choice; and
 - If the Local WDB determines, a pay-for-performance contract is suitable consistent with 683.500 (note that no more than 10 percent of the local funds may be spent on pay-for-performance contract strategies as they are defined in section 3(47) of WIOA, and be consistent with 20 CFR 683.510).

Additionally, a Local WDB may determine that providing training through a combination of ITAs and contracts is the most effective approach. This approach could be used to support placing participants in programs such as Registered Apprenticeships and other similar types of training.

- 9. Priority Populations under WIOA.** Services provided to adults and dislocated workers under title I of WIOA can be a pathway to the middle class and to maintain and build skills to remain in the middle class. Across all titles, WIOA focuses on serving “individuals with barriers to employment”, defined in WIOA section 3(24) and seeks to ensure access to quality services for these populations. The WIOA Final Rules discuss priority and special populations for the Adult and Dislocated Worker programs at 20 CFR 680.600 through .660. These populations are discussed below:

Individuals with Barriers to Employment

The populations included in the “individuals with barriers to employment” in WIOA sec. 3(24) include:

- (a) Displaced homemakers (as defined in WIOA sec. 3(16));
- (b) Low-income individuals (as defined in WIOA sec. 3(36));
- (c) Indians, Alaska Natives, and Native Hawaiians (as defined in WIOA sec. 166(b));
- (d) Individuals with disabilities, including youth who are individuals with disabilities (as defined in WIOA sec. 3(25) (includes individuals who are in receipt of Social Security Disability Insurance);
- (e) Older individuals (age 55 and older) (as defined in WIOA sec. 3(39));
- (f) Ex-offenders (“offender” as defined in WIOA sec. 3(38));
- (g) Homeless individuals or homeless children and youths (see Attachment III);

- (h) Youth who are in or have aged out of the foster care system;
- (i) Individuals who are:
 - (1) English language learners (WIOA sec. 203(7)),
 - (2) Individuals who have low levels of literacy (an individual is unable to compute or solve programs, or read, write, or speak English at a level necessary to function on the job, or in the individual's family, or in society); and
 - (3) Individuals facing substantial cultural barriers;
- (j) Eligible migrant and seasonal farmworkers (as defined in WIOA sec. 167(i)(1-3);
- (k) Individuals within two years of exhausting lifetime TANF eligibility;
- (l) Single parents (including single pregnant women);
- (m) Long-term unemployed individuals (unemployed for 27 or more consecutive weeks); and
- (n) Such other groups as the Governor involved determines to have barriers to employment

Statutory Priority for Adult Funds

Section 134(c)(3)(E) of WIOA establishes a priority requirement with respect to funds allocated to a local area for adult employment and training activities. Under this section, American Job Center staff when using WIOA Adult funds to provide individualized career services, as described in Section 4 of this TEGL, training services, or both, as described in Section 7, must give priority to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. WIOA sec. 3(36) defines "low-income individual" and WIOA sec. 3(5) defines "basic skills deficient" (see Appendix IV for full definition). ETA notes that individuals who are English language learners meet the criteria for "basic skills deficient" and must be included in the priority populations for the title I Adult program. Under WIOA, priority must be implemented regardless of the amount of funds available to provide services in the local area. States are required to develop policies and procedures for applying this priority, including monitoring local areas' compliance with this priority.

Under WIOA, there is no exclusion of payments for unemployment compensation, child support payments, and old-age survivors insurance benefits from the income calculations for determining if an individual is low-income. These exclusions that were previously provided under WIA sec. 101(25) no longer apply.

The priority established in the previous paragraph does not necessarily mean that these services may only be provided to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. The Local WDB and the Governor may establish a process that also gives priority to other individuals eligible to receive such services, provided that it is consistent with priority of service for veterans (see 20 CFR 680.650) and the priority provisions of WIOA sec. 134(c)(3)(E) and §680.600. Any additional priority populations identified by the State and Local WDB should be reflected in the State's WIOA Unified or Combined Plan, as well as the local area plan(s). Additionally,

the priority is to be applied for the provision of individualized career services and training services. There are no restrictions to providing basic career services; they may be provided to any eligible adult.

Veterans and Adult Priority

Veterans and eligible spouses continue to receive priority of service for all DOL-funded job training programs, which include WIOA programs. However, as described in TEGL 10-09, when programs are statutorily required to provide priority for a particular group of individuals, such as the WIOA priority for Adult funds described above, priority must be provided in the order described below. A veteran must meet each program's eligibility criteria to receive services under the respective employment and training program. For income-based eligibility determinations and for determining priority of service, military pay or allowances paid while on active duty or paid by the Department of Veterans Affairs (VA) for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income, in accordance with 38 U.S.C. 4213 and 20 CFR 683.230.

Priority must be provided in the following order:

- i. First, to veterans and eligible spouses who are also included in the groups given statutory priority for WIOA Adult formula funding. This means that veterans and eligible spouses who are also recipients of public assistance, other low-income individuals, or individuals who are basic skills deficient would receive first priority for services with WIOA Adult formula funds for individualized career services and training services.
- ii. Second, to non-covered persons (that is, individuals who are not veterans or eligible spouses) who are included in the groups given priority for WIOA adult formula funds.
- iii. Third, to veterans and eligible spouses who are not included in WIOA's priority groups.
- iv. Fourth, priority populations established by the Governor and/or Local WDB.
- v. Last, to non-covered persons outside the groups given priority under WIOA.

Note: When past income is an eligibility determinant for Federal employment or training programs, any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded for the veteran and for other individuals for whom those amounts would normally be applied in making an eligibility determination. Military earnings are not to be included when calculating income for veterans or transitioning service members for this priority, in accordance with 38 U.S.C. 4213.

Additionally, the WIOA Final Rule at 20 CFR 680.230, require coordinating WIOA funded training with "other grant assistance", such as Federal Pell Grants. Some service providers have interpreted these provisions to mean that veterans or spouses who are eligible for the GI Bill or other forms of VA funded education or training are required to coordinate their entitlement to those benefits with their eligibility for WIOA funded training. Some have further interpreted the coordination requirement to mean that the VA funded training

entitlement must be exhausted before the veteran or eligible spouse can be enrolled in WIOA funded training. However, VA benefits for education and training services do not constitute “other grant assistance” under WIOA’s eligibility requirements. Therefore, eligibility for VA benefits for education or training services do not preclude a veteran or the veteran’s eligible spouse from receiving WIOA funded services, including training funds. Similarly, WIOA program operators may not require veterans or spouses to exhaust their entitlement to VA funded training benefits prior to allowing them to enroll in WIOA funded training.

10. Dislocated Worker Eligibility. WIOA sec. (3)(15) defines the term dislocated worker, see Attachment III for the complete definition.

In order to further clarify the definition of a dislocated worker, the WIOA Final Rule at 20 CFR 680.130(b) allows for Governors and Local WDBs to create policies to define terms such as a “general announcement” of a plant closing consistent with WIOA sec. 3(15)(B)(ii) or (iii), “unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters,” and “unlikely to return to a previous industry or occupation” under WIOA sec. 3(15)(A)(iii) consistent with 20 CFR 680.660. Governors and Local WDBs may also develop policies for determining the eligibility of self-employed individuals, including family members and farm workers or ranch hands under WIOA sec. 3(15)(C). Additionally, States and Local WDBs should note that the definition of dislocated workers must include separating service members, as further described below.

Serving Separating Service Members and Military Spouses with Dislocated Worker Funds

Under 20 CFR 680.660, service members exiting the military, including, but not limited to, those who receive or are eligible for Unemployment Compensation for Ex-service members (UCX), generally qualify as dislocated workers. Dislocated Worker funds under title I can help separating service members to enter or reenter the civilian labor force. Generally a separating service member needs a notice of separation, either a DD-214 from the Department of Defense, or other appropriate documentation that shows a separation or imminent separation from the Armed Forces. These documents meet the requirement that the individual has received a notice of termination or layoff, to meet the required dislocated worker definition. In the case of separating service members, because they may be on a terminal leave from the military, it may make sense to begin providing career services while the service member may still be part of the Active Duty military, but has an imminent separation date. It is appropriate to provide career services to separating service members who will be imminently separating from the military, provided that their discharge will be anything other than dishonorable. Lastly, ETA policy generally dictates that a separating service member meets the dislocated worker requirement that an individual is unlikely to return to his or her previous industry or occupation in the military.

Regarding military spouses, 20 CFR 680.630 expands the definition of dislocated workers to include military spouses who have experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of the spouse. Military spouses also can qualify if they are unemployed or underemployed and are experiencing

difficulty in obtaining or upgrading employment (see WIOA secs. 3(15)(E) and 3(16)(A) and (B)) and 20 CFR 680.630 of the DOL-only Final Regulations). Military spouses may also qualify if they are a dependent spouse of a member of the Armed Forces on active duty whose family income is significantly reduced, as determined by the State or local area, because of a deployment, a call or order to active duty, a permanent change of station, or the service-connected death or disability of the service member. See Attachment III for definitions of these terms.

- 11. Employment Status Clarification.** In addition to providing career and training services to individuals who are unemployed, a significant number of job seekers are underemployed. State and local policy should be developed for serving individuals that are underemployed. Examples of underemployed individuals that the policies may include are:
- Individuals employed less than full-time who are seeking full-time employment;
 - Individuals who are employed in a position that is inadequate with respect to their skills and training;
 - Individuals who are employed who meet the definition of a low-income individual in WIOA sec. 3(36); and
 - Individuals who are employed, but whose current job's earnings are not sufficient compared to their previous job's earnings from their previous employment.

Individuals who are underemployed and meet the definition of a low-income individual may receive career and training services under the Adult program on a priority basis per Section 10 of this TEGL. Individuals who meet the definition of an individual with a barrier to employment (see WIOA sec. 3(24)) who are underemployed may also be served in the Adult program; however, unless they are a recipient of public assistance, a low-income individual, or are basic skills deficient, they are not eligible for service on a priority basis. Individuals who were determined eligible for the Dislocated Worker program who are determined by State and/or local policies to be underemployed, may still be considered eligible to receive services under the Dislocated Worker program depending on State and/or local policies. For instance, an individual who is dislocated from a full time job who has found part-time employment may still be considered a dislocated worker by State and/or local policies. We encourage states and local areas to develop policies and procedures for determining underemployment for both the adult and dislocated worker programs.

- 12. Work-Based Training.** Under WIOA, there are additional work-based training options and flexibilities for adults and dislocated workers. Work-based training presents a great opportunity for fostering increased employer engagement, implementing sector strategies, and encouraging industry partnerships, as these types of training allow employers to train their employees while continuing to be productive members of the workforce. This section covers allowed types of work-based training including: registered apprenticeships, on-the-job training (OJT), and customized training. Sections 20 CFR 680.700 through .840 govern Work-Based Training.

Registered Apprenticeship (RA)

RA is an important component of potential training and employment services that the workforce system can provide to its customers. We encourage Local WDBs to partner with the RA system and use RA opportunities as a career pathway for job seekers and as a job-driven strategy for employers and industries. RA can be funded through several mechanisms. Section 122(a)(3) of WIOA also provides a new opportunity for RA programs to be more directly connected to the public workforce system. As RA programs, they are automatically eligible for inclusion on the State and local WDB's ETPL, if they choose to be, allowing ITAs to support participants in RA programs, and more directly connect those programs to the American Job Center network.

Every State has either a federal DOL Office of Apprenticeship (OA) or a State Apprenticeship Agency (SAA). Local WDBs and American Job Centers should work with the offices in their State to implement registered apprenticeships, (Federal OA and SAA State contact information is available at <http://www.doleta.gov/oa/contactlist.cfm>).

RA Program sponsors can be Eligible Training Providers (ETPs). Some examples of typical RA Program sponsors are:

- **Employers who provide related instruction:** A number of employers with RA programs provide formal in-house instruction as well as on-the-job training (OJT) at the work site.
- **Employers who use an outside educational provider:** Under this model, RA program sponsors do not provide the related instruction or educational portion of the apprenticeship, but rely upon an outside educational entity to deliver instruction. Employers can use two- or four-year post-secondary institutions, technical training schools or on-line courses for related instruction. Under this formulation, the employer is the ETP and must identify their instructional provider.
- **Joint Apprenticeship Training Programs:** These programs are made up of employers and unions. They have an apprenticeship training school where the instructional portion of the apprenticeship program is delivered. The training schools are usually administered by the union, in which case the union would be the ETP. Multiple employers can be a part of the same Joint Apprenticeship Training Program.
- **Intermediaries:** Intermediaries can serve as program sponsors when they take responsibility for the administration of the apprenticeship program. They also can provide expertise such as curriculum development, classroom instruction and supportive services, as appropriate. The intermediary is the ETP and must identify the instructional provider if an outside organization is providing the educational portion of the apprenticeship. Intermediaries include:
 - Educational institutions including two- and four-year post-secondary institutions or technical schools. In this model, the educational institution administers the program, works with employers to hire apprentices and provides classroom or on-line instruction for the apprenticeship program;
 - Industry associations that administer the program and work with employer/members and educational entities to implement the apprenticeship program; and

- Community-based organizations that administer the program and work with employers, educational entities and the community to implement the apprenticeship program.

ETA is committed to fully integrating RA programs as an employment and training solution for American Job Center centers. American Job Center centers may make arrangements with RA programs to initiate applications to RA programs on behalf of participants. ETA wants to ensure that local areas have maximum flexibility to serve participants and support their placement into RA programs. Given the unique nature of RA, there are several ways in which training services may be used in conjunction with these programs:

- An ITA may be developed for a participant to receive RA training;
- An OJT contract may be developed with a RA program for training participants. OJT contracts are made with the employer or RA program sponsor, and RAs generally involve both classroom and on-the-job instruction. The OJT contract may be made to support some or all of the OJT portion of the RA program;
- A combination of an ITA to cover the classroom instruction along with an OJT contract to cover on-the-job portions of the RA is allowed; and
- Incumbent worker training may be used for upskilling apprentices or journey workers who already have an established working/training relationship with the RA program.

Local areas may also include supportive services, in coordination with career and/or training services, to participants in a RA program. These supportive services must be consistent with WIOA section 134(d)(2), Section 14 of this TEGE, and state and local policies.

Reporting on Registered Apprenticeship Participation under WIOA

As states and local areas increasingly adopt RA programs as part of their sector strategies and career pathways approaches, complete and accurate reporting of the workforce system's investments in these programs is vital. Under WIOA, data on program participants and program outcomes is reported by states through the Participant Individual Record Layout (PIRL). Participants who are placed into a registered apprenticeship with WIOA funds or individuals in a registered apprenticeship at the time of program entry must be identified in PIRL element 931. In addition to the other required reporting elements, individuals who receive RA training services funded in whole or in part from WIOA under either an Individual Training Account (ITA) or through a contract (e.g. OJT) must be reported under code value 09 on PIRL element number 1303 (or elements 1310 or 1315 if the participant is in receipt of multiple types of training). If the RA program is funded using an ITA, PIRL elements 1301, 1304 (code value "2"), and 1305 must also be reported.

On-the-Job Training

OJT continues to be a key method of delivering training services to adults and dislocated workers. WIOA provides for State and Local WDB to provide up to 50 percent of the wage rate of the participant to employers for the costs of training while the participant is in the

program. OJT contracts may also be entered into with RA program sponsors or participating employers in registered apprenticeship programs for the OJT portion of the registered apprenticeship program consistent with 20 CFR 680.700. Depending on the length of the registered apprenticeship and State and Local WDB OJT policies, these funds may cover some or all of the duration of the registered apprenticeship. Additionally, the Governor and Local WDBs have the flexibility under WIOA to increase the reimbursement level to up to 75 percent of the total wage taking into account the following factors:

- The characteristics of the participants taking into consideration whether they are “individuals with barriers to employment” as defined in WIOA sec. 3(24);
- The size of the employer, with an emphasis on small businesses;
- The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and
- Other factors the Governor or Local WDB may determine appropriate (e.g. the number of employees participating in the training, wage and benefit levels of the employees (both pre and post participation earnings), and relation of the training to the competitiveness of the participant).

Governors or Local WDBs must document the factors used when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent.

Customized Training

Customized training is designed to meet the specific requirements of an employer or group of employers with the commitment that the employer(s) hire an individual upon successful completion of the training. The Final Rules provide Local WDBs with flexibility to ensure that customized training meets the unique needs of the job seekers and employer(s). The employer must pay for a significant portion of the cost of training, as determined by the Local WDB. Local WDBs must identify policies for determining what constitutes employer’s payment of “a significant portion of the cost of training” taking into account: the size of the employer and other factors the Local WDB determines are appropriate, which may include, the number of employees participating in training, wage and benefit levels of those employees (at present and anticipated upon completion of the training), relation of the training to the competitiveness of a participant, and other employer-provided training and advancement opportunities.

Reporting On-the-Job Training and Customized Training Participation under WIOA

It is important to note that OJT and customized training are excluded from the credential attainment performance indicator because although they often provide employment benefits to recipients of these services, they rarely result in a credential. However, ETA encourages Local WDBs to consider OJT and customized training programs that do result in a credential.

13. Incumbent Worker Training (IWT). IWT provides both workers and employers with the opportunity to build and maintain a quality workforce and is governed by sections 20 CFR

680.780 through .820 of the Final Rule. IWT is designed to meet the needs of an employer or group of employers to retain a skilled workforce or avert layoffs. IWT is not permitted to be used to provide the occupational training a new hire needs. IWT can be used to either:

- Help avert potential layoffs of employees, or
- Obtain the skills necessary to retain employment, such as increasing the skill levels of employees so they can be promoted within the company and create backfill opportunities for less-skilled employees.

Under section 134(d)(4) of WIOA and 20 CFR 680.800, a Local WDB can use up to 20 percent of their Adult and Dislocated Worker funds to provide for the federal share of the cost of providing IWT. For example, if a Local WDB receives \$1.5 million in Adult funds and \$1.0 million in DW funds; it may use up to \$500,000 (20 percent of the total) for IWT. This 20 percent can be used for IWT activities that are programmatic in nature, as administrative activities must be paid out of the Board's administrative funds. The Local WDB must determine an employer's eligibility for participating in IWT based on the following factors which help to evaluate whether training would increase the competitiveness of the employees or both the employees and the employer:

- The characteristics of the individuals in the program (e.g. individuals with barriers to employment);
- Whether the training improves the labor market competitiveness of the employees or both the employees and the employer; and
- Other factors the Local WDB may consider appropriate, including:
 - the number of employees participating in the training;
 - wage and benefit levels of those employees (both pre- and post-training earnings);
 - the existence of other training and advancement opportunities provided by the employer;
 - credentials and skills gained as a result of the training;
 - layoffs averted as a result of the training;
 - utilization as part of a larger sector and/or career pathway strategy; or
 - employer size

For an employer to receive IWT funds, the individual(s) receiving training must be:

- Employed;
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship; and
- Employment history requirement - Have an established employment history with the employer for 6 months or more (which may include time spent as a temporary or contract worker performing work for the employer receiving IWT funds).

There is one exception to the six month requirement, which is that in the event that incumbent worker training is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for six months or more as long as a majority of those employees being trained meet the employment history requirement.

An incumbent worker does not have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA, unless they are also enrolled as a participant in the WIOA adult or dislocated worker program.

The Governor or the State WDB may make recommendations to the Local WDBs for providing incumbent worker training that has a statewide impact. ETA encourages States and Local WDBs to cultivate opportunities and develop policies that can appropriately support employers in their efforts to develop a more competitive workforce or avert potential layoffs and that provide incumbent workers with opportunities for advancement and wage gains within their company.

States may also provide IWT with Rapid Response funds for statewide incumbent worker training activities as part of a broader layoff aversion strategy, as described in section 18 of this TEGL. IWT policies must be consistent with State and Local Plans, as well as with career pathway and sector strategy approaches for in-demand occupations. Generally, IWT should be provided to private sector employers; however, there may be instances where non-profit and local government entities may be the recipients of IWT funds. For example, IWT may be used in the health care industry where hospitals are operated by non-profit or local government entities and a nursing upskilling opportunity is available.

IWT can also be used for underemployed workers—e.g. workers who would prefer full-time work but are working part-time for economic reasons. While these workers are employed, they may have accepted reduced hours to gain or maintain employment or a previous dislocation has led them to accept reduced employment and often lower wages that may have a permanent effect on their careers. The use of these strategies may focus on increasing skills for underemployed frontline workers in an effort to advance these workers to more skilled positions with the same employer or industry sector leading to an increase in earnings through more work hours or an increase in pay. As part of an incumbent worker upskilling strategy, State and Local WDBs are also encouraged to develop an upskill/backfill strategy which involves filling jobs vacated by workers who are moving into more advanced positions in the company with other WIOA participants. State and Local WDBs are encouraged to develop contracts such that once incumbent workers advance with the employer; the employer then provides an opportunity to the State or Local WDBs to fill this now vacant position with a local WIOA participant.

State and Local WDBs must develop a process for documenting the six month work-history requirement for IWT recipients with the employer. The contract between the Local WDB and the employer must include this as a term of the contract.

Employer Payment Requirement

Employers are required to pay the non-Federal share of the cost of providing incumbent worker training. WIOA sec. 134(d)(4)(D) requires Local WDBs to establish policies regarding the non-federal share of the cost of IWT. Employers are required to pay a portion of the training for those individuals in incumbent worker training and this may be done

through both cash payments and fairly evaluated in-kind contributions. The employer contribution may include the wages the employer pays to the incumbent worker trainee while the worker is attending training. Under section 134(d)(4)(D) of WIOA, in establishing the employer share of the cost, the Local WDB must consider the number of employees participating in the training, the wage and benefit levels of the employees (at the beginning and anticipated upon completion of the training), the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities. The employer's payment for the non-federal share can be cash payments, fairly evaluated in-kind contributions, or both. The minimum amount of employer share in the IWT depends on the size of the employer and may not be less than:

- 10 percent of the cost, for employers with 50 or fewer employees;
- 25 percent of the cost, for employers with between 51 to 100 employees; and
- 50 percent of the cost, for employers with more than 100 employees.

Employer share must be reported on the quarterly ETA-9130 financial report. States may also create policies establishing minimum amounts of employer share for IWT conducted using statewide funds, including rapid response funds.

14. Supportive Services and Needs-Related Payments. A key principle in WIOA is to provide local areas with the authority to make policy and administrative decisions, and the flexibility to tailor the workforce system to the needs of the local community. To ensure maximum flexibility, this guidance provides local areas the discretion to provide the supportive services they deem appropriate, subject to WIOA's limitations. Supportive services are designed to provide a participant with the resources necessary to enable their participation in career and training services, and are governed by the DOL-only Final Rule at 20 CFR 680.900 through .970.

Local WDBs must develop policies and procedures governed by 20 CFR 680.900 through .970 of the Final Rule. Local WDBs, in consultation with the American Job Center partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. The policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. These policies may establish limits on the provision of supportive services or provide the one-stop center with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to a participant. These policies may also allow American Job Centers to grant exceptions to these limits. Local WDBs must develop policies and procedures that ensure that supportive services are WIOA-funded only when these services are not available through other agencies and that the services are necessary for the individual to participate in title I activities. These policies include establishing limits on the provision of supportive services and any exceptions to those limits, as described in 20 CFR 680.920.

Supportive services may be made available to any adult or dislocated worker participating in title I career services or training activities that is unable to obtain supportive services through other programs providing such services. Additionally, the supportive services must be necessary to enable the individual to participate in career services or training activities. Note that follow-up career services are not a qualifying service for the receipt of supportive services; therefore, an individual who is only receiving “follow-up” services may not receive supportive services. Individuals identified as needing ongoing supportive services must still be participating in career services (other than follow-up), training activities, or both to continue to receive supportive services. Supportive services also may not be used to extend the date of exit for performance accountability purposes. Supportive services, like follow-up services, do not make an individual a participant or extend participation.

Supportive services may include, but are not limited to:

- Assistance with transportation;
- Assistance with child care and dependent care;
- Linkages to community services;
- Assistance with housing;
- Needs-Related Payments (available only to individuals enrolled in training services and must be consistent with 20 CFR 680.930, 680.940, 680.950, 680.960, and 680.970)
- Assistance with educational testing;
- Reasonable accommodations for individuals with disabilities;
- Referrals to health care;
- Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eye glasses and protective eye gear;
- Assistance with books, fees, school supplies, and other necessary items for students enrolled in post-secondary education classes;
- Payments and fees for employment and training-related applications, tests, and certifications; and
- Legal aid services.

Needs-related payments are designed to provide a participant with financial assistance for the purpose of enabling them to participate in training services. ETA recognizes that many individuals in need of training services may not have the resources available to participate in the training. Needs-related payments can help individuals meet their non-training expenses and help them to complete training successfully. The maximum level of needs-related payments must be established by the Local WDB and must follow criteria at 20 CFR 680.970. According to sec. 134(d)(3)(B) of WIOA, a participant must be enrolled in a training program described in sec. 134(c)(3) of WIOA in order to receive needs-related payments. Specific criteria for Adult and Dislocated Worker eligibility may be found in 20 CFR 680.940 and 680.950.

15. Transfer of Funds. WIOA sec. 133(b)(4) provides the authority for Local WDBs, with the written approval of the Governor, to expend up to 100 percent of the Adult activities funds on Dislocated Worker activities, and up to 100 percent of Dislocated Worker activities funds on Adult activities. Governors must have a written policy in place to evaluate transfer requests

from local workforce areas which is documented in the State Plan or another written policy. ETA encourages the Governor's policy to take into account the employment and service needs of the local area (both job seekers and employers), current labor market information and demographics, consistency with broader strategies in the local plan, meeting the Local Area's negotiated levels of performance, and any other considerations the Governor considers necessary to determine the appropriateness of a transfer. Expenditures of monies transferred between the local dislocated workers and adult programs are reported on the ETA-9130 reports. ETA notes when considering such transfers that career and training services must continue to be made available to both adults and dislocated workers in the American Job Centers (see WIOA sec. 134(c)(1)).

16. Performance Accountability: Career and Training Services. In order to achieve the vision of WIOA, align service delivery across the core WIOA programs, and ensure a comprehensive approach across all partners, the Departments of Labor and Education have developed common performance measures and reporting elements, see TEGL 10-16 (https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8226). This includes common definitions of the terms "reportable individual", "participant", and "exit" for performance accountability purposes. These terms distinguish which individuals are included in performance accountability calculations, while also ensuring the Department tracks the other important self-service and information-only services or activities provided by the Adult, Dislocated Worker, and ES programs.

In the WIOA title I Adult and Dislocated Worker programs, in order to become a participant, an individual must meet all applicable program requirements to receive services, such as being determined eligible and have received a service other than self-service or accessed information-only services or activities. For the ES program, which provides access to all job seekers and does not have an eligibility component, to be considered a participant, an individual must receive a service other than self-service and information-only services or activities to be considered a participant. A chart that details which services go beyond self-service or information-only service and therefore trigger participation is included as Attachment II. It is important to note that the receipt of one or more services that would trigger participation means that a person is considered a participant and therefore should be included in the performance accountability measures reported through the Annual Statewide Performance Reports. The WIOA Final Rules discuss performance accountability at Part 677 of the Joint Regulations. 20 CFR 677.150 defines "participant", "reportable individual", and "exit" and for the purposes of the WIOA Adult, Dislocated Worker, and ES programs, and the definitions of these terms are included in III of this TEGL.

State and Local WDBs should also note that unlike the WIOA Youth program, in the WIOA Adult, Dislocated Worker, and the ES programs, an assessment (other than an eligibility assessment) is considered to be a type of basic career service that does trigger participation. A referral to employment (when a specific individual or group of individuals is referred to a specific job or jobs) is the only type of referral that would trigger participation. Referrals alone to other programs and services do not trigger participation. However, referrals that are generated as a result of a service, such as career counseling, trigger participation. Simple

searches of job boards or automated emails are not considered to be referrals to employment, as they are informational in nature and contain publicly available information.

The ES program provides vital self-service and informational services which would result in the ES program having a high percentage of reportable individuals. Even though these individuals are not included in the performance accountability calculations, ETA strongly supports these services and other services which can be provided virtually. ETA also notes that individuals may also receive virtual services and virtual career planning that demonstrate sufficient interaction or engagement with the system to be considered participants.

Performance Accountability for Training Services

Generally, all participants enrolled in training funded by the WIOA title I Adult, Dislocated Worker program, or both are counted for performance accountability purposes. However, participants who receive OJT or customized training *are not* included in the credential attainment indicator at 20 CFR 677.155(a)(1)(iv) for performance accountability purposes, but, must be included in the calculation of the other performance indicators.

Performance Accountability for Incumbent Worker Training

WIOA sec. 134(d)(4) requires the Local WDB to determine if an employer is eligible to have its employees receive IWT and the incumbent worker who receives the training is not required to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA title I, unless they also are enrolled as a participant, resulting from the receipt of other services in the WIOA title I Adult or Dislocated Worker program. Due to WIOA sec. 134's unique eligibility requirements, the Department does not consider individuals who receive only IWT to be participants required for inclusion in the WIOA performance accountability calculations.

As a result, an individual who *only* receives incumbent worker training and does not become a core program participant will not be included in the calculation of the State primary indicators of performance for negotiations and accountability purposes. However, states and Local WDBs are required to report the outcomes of individuals in receipt of IWT on the primary indicators of performance (i.e. employed 2nd quarter after exit, employed 4th quarter after exit, median earnings, measurable skills gain, and credential attainment), among other required elements. Although there are fewer required elements for an individual who receives only IWT and is not an Adult or Dislocated Worker, the required elements for these "IWT-only" individuals will mostly be limited to the elements that are used to identify whether the incumbent worker was employed in certain quarters after exit, the wages earned during these quarters, whether a measurable skill gain or gains were achieved, and whether a credential was attained (see TEGL 10-16, Attachment 8 for the specific list of required elements). For the purposes of calculating these metrics, the exit date for a participant who has only received IWT will be the last date of training, as indicated in the training contract. If the individual receiving IWT is also a participant in another program, the State is required to report that program's performance reporting information.

All recipients of IWT must be reported in the PIRL under element number 907, regardless of whether they become a participant in one of the other WIOA programs. For individuals who

only receive IWT, and therefore are not participants in the Adult or Dislocated Worker programs, states must still report a “Date of Program Entry” in element 900, and should report a “0” in elements 903 “Adult” and 904 “Dislocated Worker.” The Departments also encourage the collection of participant Social Security Numbers (SSNs) as part of the training contract with the employer so that wage records will be available for these individuals. Otherwise the State or Local WDB must utilize supplemental wage information to verify the wages reported. The Departments will issue additional guidance on the usage of supplemental data.

For individuals who receive IWT that is funded with Statewide Rapid Response (element 908) funds under WIOA sec. 134(a)(2)(A)(i)(I), states must also report on these individuals under DOL-only PIRL element 1501, “Most Recent Date Received Rapid Response Services”.

17. Other Permissible Local Activities. WIOA provides significant flexibility to local areas when providing services with adult and dislocated worker funds. In addition to the required career and training services, local areas may use these funds to provide additional job seeker services, business services, as well as to facilitate enhanced coordination between other partner programs and entities at the State and local level. Local areas can use these funds to develop new types of technical assistance, develop new intake procedures, test new procurement methods which may lead to better outcomes for job seekers, and ensure provision of robust services for businesses throughout the workforce system. These permissible local activities include:

Other Job Seeker Services

- Customer support to enable individuals with barriers to employment (including individuals with disabilities and veterans) to navigate among multiple services and activities (e.g. dedicated staff specializing in disability services);
- Training programs for displaced homemakers and for individuals training for nontraditional occupations (see WIOA sec. 3(37)), in conjunction with programs operated in the local area; and
- Work support activities for low-wage workers, in coordination with American Job Center partners, which will provide opportunities for these workers to retain or enhance employment. Work support activities could include providing services during nontraditional hours and provision of onsite childcare while the services are being provided. Work support activities are a strategy that can be used to ensure quality services to individuals who are underemployed. This may include any activities available under the WIOA Adult and Dislocated Worker programs in coordination with the appropriate activities and resources available through partner programs. For example, an apprentice who has not yet reached the full wage-rate could be provided these services to help him/her to continue to advance in the RA.

Other Employer Services

- Customized screening and referral of qualified participants in career and training services to employers;

- Customized employment-related services to employers, employer associations, or other such organizations on a fee-for-service basis that are in addition to labor exchange services available to employers under the ES program; and,
- Activities to provide business services and strategies that meet the workforce investment needs of area employers, as determined by the Local WDB, consistent with the local plan.

Other Coordination Activities

- Employment and training activities in coordination with child support enforcement activities, as well as child support services and assistance activities, of State and local agencies carrying out part D of title IV of the Social Security Act;
- Employment and training activities in coordination with cooperative extension programs carried out by the Department of Agriculture;
- Employment and training activities in coordination with activities to facilitate remote access to services provided through the American Job Center network, including facilitating access through the use of technology;
- Improving coordination between workforce investment activities and economic development activities carried out within the local area involved, and to promote entrepreneurial skills training and microenterprise services;
- Improving services and linkages between the local workforce investment system and employers, including small employers, in the local area;
- Strengthening linkages between the American Job Center network and the unemployment insurance programs;
- Improving coordination between employment and training activities and programs carried out in the local area for individual with disabilities, including programs carried out by State agencies relating to intellectual disabilities and developmental disabilities, activities carried out by Statewide Independent Living Councils established under sec. 705 of the Rehabilitation Act of 1973, programs funded under part B of chapter 1 of title VII of the Act, and activities carried out by centers for independent living; and
- Other Federal agency supported workforce development initiatives, under the Departments of Transportation, Energy, Veterans Affairs, Housing and Urban Development, Interior, Health and Human Services, and Defense programs.

Other Activities

- Implementing a pay-for-performance contract strategy for training services utilizing up to 10 percent of the combined total of Adult and Dislocated Worker funds;
- Technical assistance for American Job Center partners, and eligible training providers on the provision of services to individuals with disabilities in local areas, including staff training and development, provision of outreach and intake assessments, service delivery, service coordination across providers and programs, and development of performance accountability measures;
- Activities to adjust the economic self-sufficiency standards referred to in WIOA sec. 134(a)(3)(A)(xii) for local factors or activities to adopt, calculate or commission for approval, economic self-sufficiency standards for the local areas that specify the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations; and

- Implementing promising services to workers and businesses, which may include support for education, training, skill upgrading, and statewide networking for employees to become workplace learning advisors and maintain proficiency in carrying out the activities associated with such advising.

18. Rapid Response. Rapid Response activities are described at 20 CFR 682 Subpart C of the WIOA regulations (covering 20 CFR 682.300 through 682.370). Rapid Response encompasses the strategies and activities necessary to plan for and respond as quickly as possible following an announcement or notification of a permanent closure or mass layoff, a mass job dislocation resulting from a natural or other disaster, or the filing of a Trade Adjustment Assistance (TAA) petition. Rapid Response delivers services to enable dislocated workers to transition to new employment as quickly as possible.

Purpose

The purpose of Rapid Response is to promote economic recovery and vitality by developing ongoing, comprehensive approaches to identifying, planning for, or responding to layoffs and dislocations, and preventing or minimizing their impacts on workers, businesses, and communities. A successful Rapid Response system must include:

- Informational and direct reemployment services for workers, including but not limited to: information and support for filing unemployment insurance claims; information about the Trade Adjustment Assistance (TAA) program; information on the impacts of layoff on health coverage or other benefits; information on and referral to career services; reemployment-focused workshops and services; and training;
- Delivery of solutions to address the needs of businesses in transition, provided across the business lifecycle (expansion and contraction), including comprehensive business engagement and layoff aversion strategies and activities designed to prevent or minimize the duration of unemployment;
- Convening, brokering, and facilitating the connections, networks and partners to ensure the ability to provide assistance to dislocated workers and their families such as home heating assistance, legal aid, and financial advice; and
- Strategic planning, data gathering and analysis designed to anticipate, prepare for, and manage economic change.

Responsibility for Carrying out, Overseeing, and Managing Rapid Response Activities

Under the WIOA Final Rule at 20 CFR 682.310, Rapid Response activities must be carried out by the State or an entity designated by the State, in conjunction with the Local WDBs, Chief Elected Officials (CEOs), and other stakeholders consistent with WIOA secs. 133(a)(2) and 134(a)(2)(A). The regulations also require states to establish and maintain a Rapid Response unit, even if the State chooses to designate an entity to carry out some or all of the Rapid Response program activities in the State. This State-level unit is responsible for developing policies and practices for Rapid Response, carrying out statewide Rapid Response activities, and, if a state entity was designated to carry out Rapid Response activities, the

state-level unit must oversee Rapid Response activities undertaken by a designated State entity.

When is Rapid Response Required?

Rapid Response must be provided when one or more of the following circumstances occur:

- a) Announcement or notification of a permanent closure of a facility, store, enterprise, or plant, regardless of the number of workers affected;
- b) Announcement or notification of a mass layoff (see below for more detail);
- c) A mass job dislocation (see below for how mass dislocation is defined) resulting from a disaster as defined by state or local emergency management policies. The Department encourages States to consider appropriate roles and responsibilities for Rapid Response activities following a natural or other disaster event and establish these roles and responsibilities as part of any emergency management plans that are developed; or,
- d) The filing of a TAA petition, in accordance with sec. 221(a)(2)(A) of the Trade Act, which requires that the Governor ensure that Rapid Response services are delivered to all workers who are covered by the petition for TAA.

Although we describe above the circumstances that require delivery of Rapid Response, we do not intend to suggest or imply that these are the only instances for which States and local workforce areas may provide Rapid Response. Instead, the Department strongly encourages States or their designated entities to deliver Rapid Response services to as many workers and companies as possible and to adopt policies that maximize the opportunities for Rapid Response services to be provided in a manner that best supports the businesses and workers in their communities. One good way to achieve this goal is through the State's definition of "mass layoff" for purposes of Rapid Response.

Defining "Mass Layoff" for Purposes of Rapid Response

One specific instance where Rapid Response services must be provided is upon notification of a mass layoff. As described in the regulations, for the purposes of Rapid Response, a mass layoff will have occurred when at least one of the following conditions have been met:

- A mass layoff, as defined by the State; however, under no circumstances may a State's definition of mass layoff exceed a minimum threshold of 50 affected workers. For example, in its definition, the State cannot set the minimum threshold of laid off workers at 75, but it can be set to as few as 1. The definition may be based upon factors such as the size of the company that is impacted, the percentage of workers impacted by a layoff, the income level of the employees, and other relevant factors;
- Where a State has not defined a minimum threshold for mass layoff, any layoff affecting 50 or more workers will be considered a mass layoff by default; or
- When a company files a Worker Adjustment and Retraining Notification (WARN) Act notice, regardless of the number of workers affected by the layoff announced.

As mentioned above, the Department strongly encourages states to consider developing mass layoff policies and definitions that maximize the number of companies and workers who may benefit from Rapid Response services.

Required Rapid Response Activities

Rapid Response practitioners will notice that the regulations for Rapid Response under WIOA have significantly increased the amount and types of required activities from under WIA. These required elements include activities that were previously discussed in guidance and through technical assistance as well as elements that were previously allowable under WIA but which are now required. In particular, the regulations now specifically identify layoff aversion activities and the provision of additional assistance to local areas experiencing increased dislocation events as required Rapid Response activities. Our experience under WIA showed that such activities are critical for a successful Rapid Response program. To meet the needs of affected workers and businesses, a Rapid Response program must be proactive, data-driven, engaged with businesses, and focused on preventing layoffs or minimizing their negative impacts. Therefore, we substantially increased the level of required activities under Rapid Response to drive those outcomes.

A. Layoff Aversion

The most significant change related to Rapid Response from the WIA regulation to the WIOA regulation is the requirement to conduct layoff aversion activities, as appropriate. More specifically, the regulations require that states and local areas have the capability to conduct layoff aversion; however, it is left to the discretion of the operators of Rapid Response programs to determine which strategies and activities are applicable in a given situation, based upon specific needs, policies, and procedures within the state and operating areas. In this way the regulations permit state and local rapid response operators the flexibility to meet the requirements of WIOA based on the specific needs of the companies and workers being served and the particular characteristics of each event, while ensuring that valuable and important solutions are delivered whenever possible. We encourage state and local rapid response teams to develop strategies that maximize the ability to deploy the appropriate layoff aversion solutions for the challenges they face.

Layoff aversion strategies and activities are designed to prevent, or minimize the duration of, unemployment resulting from layoffs. Layoff aversion is a comprehensive approach requiring the integration of data, relationships, partnerships, and policies and procedures to allow an assessment of the economic situation that exists within a given area. This approach enables the development of a plan that may be applied, at any time, to intervene and manage transition that occurs within that area. Layoff aversion strategies and activities are customized to specific needs, quickly deployable, informed by economic data, and designed and coordinated with partners as necessary.

ETA encourages state and local Rapid Response operators to design innovative solutions for both businesses and workers in transition. Such solutions include, but are not limited to:

- Ongoing engagement, partnership, and relationship-building activities with businesses in the community, in order to create an environment for successful layoff aversion efforts and to enable the provision of assistance to dislocated workers in obtaining reemployment as soon as possible;
- Providing assistance to employers in managing reductions in force, which may include early identification of firms at risk of layoffs, assessment of the needs of and options for at-risk firms, and the delivery of services to address these needs;
- Funding feasibility studies to determine if a company's operations may be sustained through a buyout or other means to avoid or minimize layoffs;
- Developing, funding, and managing incumbent worker training programs or other worker upskilling approaches as part of a layoff aversion strategy or activity;
- Connecting companies to state Short-Time Compensation or other programs designed to prevent layoffs or to quickly reemploy dislocated workers, employer loan programs for employee skill upgrading; and other Federal, state and local resources as necessary to address other business needs;
- Establishing linkages with economic development activities at the Federal, State and local levels, including Federal Department of Commerce programs and available State and local business retention and expansion activities;
- Partnering or contracting with business-focused organizations to assess risks to companies, propose strategies to address those risks, implement services, and measure impacts of services delivered;
- Conducting analyses of the suppliers of an affected company to assess their risks and vulnerabilities from a potential closing or shift in production of their major customer;
- Engaging in proactive measures to identify opportunities for potential economic transition and training needs in growing industry sectors or expanding businesses; and
- Connecting businesses and workers to short-term, on-the-job, or customized training programs and apprenticeships before or after layoff to help facilitate rapid reemployment.

B. Other Required Activities

In addition to layoff aversion as described above, there are a number of other activities that are required to be carried out by state and local Rapid Response operators. These are:

- Immediate and on-site contact with the employer, affected workers or their representatives, and the local community, which includes an assessment of, and strategy to address: 1) the employer's layoff plans and schedule; 2) the background, probable assistance needs, and reemployment prospects of the affected workers; and 3) resources available to meet the short and long-term assistance needs of the affected workers;
- The provision of information and access to unemployment compensation benefits and programs, such as Short-Time Compensation, comprehensive American Job Center network services, and employment and training activities, including information on the TAA program, Pell Grants, the GI Bill, and other resources;
- The delivery of other necessary services and resources including workshops and classes, use of worker transition centers, and job fairs, to support reemployment efforts for affected workers;

- Establishing partnerships with Local WDBs and CEO(s) to ensure coordinated responses to dislocation events and, as needed, obtain access to state or local economic development assistance. The coordinated response may include the development of an application for a National Dislocated Worker grant as provided in 20 CFR part 687;
- The provision of emergency assistance adapted to a particular layoff, disaster, or other emergency situation;
- As appropriate, developing systems and processes for identifying and gathering information for early warning of potential layoffs or opportunities for layoff aversion; analyzing, and acting upon, data and information on dislocations and other economic activity in the state, region, or local area; and tracking outcome and performance data and information related to the activities of the Rapid Response program;
- To ensure the ability to provide Rapid Response services as early as possible, developing and maintaining partnerships with other appropriate Federal, State and local agencies and officials, employer associations, technical councils, industry business councils, labor organizations, and other public and private organizations, as applicable. These partnerships must conduct strategic planning activities for addressing dislocation events and ensuring timely access to a broad range of assistance. They must also develop mechanisms for gathering and exchanging information and data relating to potential dislocations, available resources, and the customization of layoff aversion or Rapid Response activities;
- Delivery of services to worker groups for which a petition for TAA has been filed;
- The provision of additional assistance to local areas that experience disasters, mass layoffs, or other dislocation events that exceed the capacity of the local area to respond with existing resources; and
- The provision of guidance and financial assistance as appropriate, when establishing a labor-management committee if voluntarily agreed to by the employee's bargaining representative and management. The committee may devise and oversee an implementation strategy that responds to the reemployment needs of the workers. The assistance to such a committee may include training and technical assistance to members of the committee, and funding the operating costs of a committee to enable it to provide advice and assistance in carrying out Rapid Response activities and in the design and delivery of WIOA-authorized services to affected workers.

Other Allowable Activities

WIOA offers significant flexibility with regard to the use of Rapid Response funds. States or designated Rapid Response providers may, in order to conduct layoff aversion activities or to prepare for and respond to dislocation events, devise additional strategies or conduct activities that are intended to minimize the negative impacts of dislocation on workers, businesses, and communities and to ensure that workers impacted by layoffs are able to be reemployed as quickly as possible.

Additionally, when circumstances allow, Rapid Response operators may provide guidance and/or financial assistance to establish community transition teams to assist the impacted community in organizing support for dislocated workers, and in meeting the basic needs of

their families. Such assistance can include, but is not limited to providing heat, shelter, food, clothing and other necessities and services that are beyond the resources and ability of the American Job Center network to provide.

Additional Assistance

WIOA allows states to reserve up to 25 percent of dislocated worker funds for Rapid Response activities. Once the state has reserved adequate funds for Rapid Response activities, any of the remaining funds reserved may be provided to local areas that experience increases of unemployment due to natural disasters, layoffs or other events, for provision of direct career services to participants if there are not adequate local funds available to assist the dislocated workers. We encourage states to establish the policies or procedures governing the provision of additional assistance.

Program Reporting

In certain instances, states must report certain information on recipients of Rapid Response services. When an individual record exists for a WIOA participant also served under the Rapid Response program, states must report information regarding the receipt of Rapid Response services for that individual.

Rapid Response Funds at the End of the First Program Year

Funds that are reserved for Rapid Response activities and remain unobligated after the first program year for which they were allotted may be used to carry out statewide activities under 20 CFR 682.200 and 682.210. Statewide activities for which these funds may be used include prioritizing the planning for and delivery of activities designed to prevent job loss, increasing the rate of reemployment, building relationships with businesses and other stakeholders, building and maintaining early warning networks and systems, and otherwise supporting efforts to assist long-term unemployed workers to return to work. When managing the use of Rapid Response funds and their availability for statewide purposes after the first program year, states must ensure 80 percent of their total Dislocated Worker funds are obligated by the end of the first program year, or they could trigger recapture of the next program year's Dislocated Worker funds under the realottment provision contains in WIOA 133(c).

Although the states have additional flexibility in using rapid response funds for statewide activities at the end of the first program year, the recapture process that takes place during the same time has not changed. States are expected to obligate 80 percent of its Dislocated Worker funds, including its rapid response funds, in order to avoid recapture (20 CFR 683.135).

- 19. Coordination with WIOA Core Programs.** WIOA provides a significant opportunity for coordination across all of the core programs including planning, reporting, and service delivery. Below are some examples of how the WIOA title I Adult and Dislocated Worker

programs, along with the ES program, can partner with the other WIOA core programs:

Youth Formula Program (WIOA title I)

WIOA creates an opportunity for the Adult program to work closely with the Youth program to ensure young adults receive the services they need to succeed in education and the workforce. Individuals aged 18-24 may be eligible for both the WIOA Youth and Adult programs and can be co-enrolled in the two programs. ETA encourages the WIOA Adult and Dislocated Worker programs, along with the ES program, to coordinate closely with the WIOA Youth program to maximize flexibility and service delivery to eligible populations. Some examples where enhanced coordination could take place are as follows:

- Referring 18-24 year old individuals to the title I Youth program if they need more intensive support around specific program elements described under WIOA sec. 129(c)(2).
- Utilizing WIOA Adult formula program funded ITAs as part of a career pathway strategy for Youth program participants co-enrolled as adults or dislocated workers;
- Utilizing work-based training opportunities for Youth program participants co-enrolled as adults or dislocated workers, as identified in their Individual Service Strategy (ISS) as part of a career pathway; and
- Career pathway planning.

(Note: This is not an exhaustive list of ways to coordinate activities and service delivery, but is meant to illustrate some of WIOA's flexibilities and services to improve educational and employment opportunities for participants.)

Local program operators may determine, for these individuals, the appropriate level and balance of services under the Youth and Adult programs. Such determinations regarding the appropriate program for the participant must be based on the service needs of the participant and if the participant is career-ready based on an assessment of his/her occupational skills, prior work experience, employability, and the participant's needs. An important difference to note here is that while receiving an assessment from the Adult, Dislocated Worker, or ES programs does trigger participation and inclusion in the performance accountability calculations for those programs, an objective assessment carried out under WIOA sec. 129(c)(1)(A) does not trigger participation in the Youth program. Local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in Youth and Adult programs concurrently, and ensure no duplication of services.

Adult Education and Family Literacy Act (WIOA title II)

Title II of WIOA authorizes the Adult Education and Family Literacy Act (AEFLA). AEFLA, administered by the US Department of Education, is designed to create a partnership among the Federal government, States, and localities to provide, on a voluntary basis, adult education and literacy activities. These activities are designed to:

- Assist adults to become literate and obtain the knowledge and skills necessary for

- employment and economic self-sufficiency;
- Assist adults who are parents or family members to obtain the education and skills that are necessary to becoming full partners in the educational development of their children and lead to sustainable improvements in the economic opportunities for their family;
 - Assist adults in attaining a secondary school diploma and in the transition to postsecondary education and training, including through career pathways;
 - Assist immigrants and other individuals who are English language learners in:
 - Improving their reading, writing, speaking, and comprehension skills in English, as well as mathematical skills; and,
 - Acquiring an understanding of the American system of government, individual freedom, and the responsibilities of citizenship.

WIOA provides new opportunities for the title I Adult and Dislocated Worker programs, as well as the ES, to partner with title II providers.

WIOA sec. 134(c)(2) authorizes career services to be provided with title I adult and dislocated worker funds. Some of these services are activities that are also allowable under AEFLA, including workforce preparation activities, English language acquisition programs, and integrated education and training programs. In order to ensure consistency across the services for the benefit of participants and service providers, ETA is aligning the definitions for these services with those used by the AEFLA program; see Attachment III for their definition.

This allows title I and title II programs to coordinate in the development of career pathways and to co-enroll participants so they receive the full spectrum of services for their education and employment needs. For example, an individual could receive adult education services while at the same time receiving services from the OJT program funded by title I. If individuals are unable to receive services from the AEFLA program, but are determined to be in need of those services by the career planner and eligible for the services, then title I may provide those services the program is authorized to provide, as long as they are provided concurrently or in combination with training services.

Vocational Rehabilitation (WIOA title IV)

Title IV of WIOA makes a number of significant changes to the Rehabilitation Act of 1973 (Rehab Act) in order to improve and align core programs towards the goal of empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion in and integration into society. To achieve these goals, title IV amends regulations governing the State Vocational Rehabilitation Services program (VR) and State Supported Employment Services Program (Supported Employment Program) and implements limitations on the payment of subminimum wages to individuals with disabilities. WIOA provides new opportunities for coordination and referrals for the title I Adult and Dislocated Worker programs, as well as the Employment Service, to partner and enhance service delivery to individuals with disabilities, including those served under title IV of WIOA. Individuals with disabilities are identified as individuals with barriers to

employment under WIOA, and should receive any and all American Job Center services that would normally be provided to any other job seeker.

WIOA makes the following key changes to title IV programs:

- Strengthen the alignment of the VR program with other core components of the workforce development system by aligning requirements governing unified state planning, performance accountability measures, and integration into the American Job Center network ;
- Place heightened emphasis on coordination and collaboration at the Federal, State, and local levels to ensure a streamlined and coordinated service delivery system for job-seekers, including those with disabilities, and employers;
- Include a new definition of “competitive integrated employment” that combines, clarifies, and enhances the two separate definitions of “competitive employment” and “integrated setting” for the purpose of employment under the VR program;
- Revise the definition of “employment outcome” in §361.5(c)(15) and now specifically identifies customized employment as an employment outcome under the VR program, and requires that all employment outcomes achieved through the VR program be in competitive integrated employment or supported employment;
- Amend the Supported Employment Program in order to maximize the potential of individuals with disabilities, especially those with the most significant disabilities, to achieve competitive integrated employment and to expand services for youth with the most significant disabilities;
- Requires that Supported Employment must be in competitive integrated employment or, if not, in an integrated setting in which the individual is working towards competitive integrated employment on a short-time basis;
- Extends time for which supported employment services may be provided is extended from 18 months to 24 months;
- Requires States to reserve and expend 50 percent of their allotments under the Supported Employment Program to provide supported employment services, including extended services, to youth with the most significant disabilities; and
- Limit on the Use of Subminimum Wage.
- Adds new section 511, Limitations on the Use of Subminimum Wage, which imposes requirements on employers who hold special wage certificates under the Fair Labor Standards Act (FLSA) that must be satisfied before employers may hire youth with disabilities at subminimum wages or continue to employ individuals with disabilities of an age at the subminimum wage level.

VR Counselors, who are employed by the state VR agency, are responsible for determining whether an individual is eligible to receive VR services. In order to be eligible, an individual with a disability must meet the following criteria:

- Have a physical or mental impairment that poses functional limitations resulting in a substantial impediment to employment;
- Require VR services to obtain or maintain employment; and
- Must be able to benefit from VR services to obtain or maintain employment

While an individual may be determined eligible to receive VR services, the state VR agency may not be able to provide services due to insufficient staff and/or fiscal resources. In this instance, the state VR agency must implement an order of selection (OOS) that establishes the priority categories by which individuals can be served based on their functional limitations. As of 2016, approximately 50 percent of the VR agencies have implemented an OOS. For those individuals not in a priority category being served in the OOS, the state VR agency must refer the individual to another program that may be able to meet their needs. Therefore, effective partnering with the Adult, Dislocated Worker, and ES programs is essential in order to ensure individuals with disabilities seeking employment and training services receive the services they need for employment.

In order to align the core programs and create additional flexibility for the purposes of achieving the goals under title IV, funds allocated to a local area for adult and dislocated worker activities may be used to improve coordination between employment and training programs carried out in the local area for individuals with disabilities through the American Job Center network . ETA encourages local areas to utilize this flexibility to ensure a highly coordinated service delivery in coordination with title IV activities to ensure that individuals with disabilities receive the services they need for their career needs, whether the services are provided by title I, III, or IV or some combination thereof, including other community resources. Additionally, ETA encourages local areas to coordinate with programs carried out by State agencies relating to intellectual and developmental disabilities, as well as local agencies and organizations serving individuals with significant disabilities, including the local network of centers for independent living in each State.

Client Assistance Program

The purpose of this program is to advise and inform clients, client applicants, and other individuals with disabilities of all the available services and benefits under the *Rehabilitation Act of 1973*, as amended by WIOA, and of the services and benefits available to them under title I of the *Americans with Disabilities Act (ADA)*. In addition, CAP grantees may assist and advocate for clients and client applicants in relation to projects, programs, and services provided under the *Rehabilitation Act*. In providing assistance and advocacy under title I of the *Rehabilitation Act*, a CAP agency may provide assistance and advocacy with respect to services that are directly related to employment for the client or client applicant.

- 20. Coordination with Trade Adjustment Assistance (TAA).** The Dislocated Worker program is a critical partner with TAA in identifying and serving trade-impacted workers. Co-enrollment, of workers covered under certified petitions (TAA-certified workers) in partnership with the WIOA Dislocated Worker or Adult program, allows for the timely provision of individualized career services and improves the overall effectiveness of the TAA Program. Additionally, sec. 221(a)(2)(A) of the Trade Act requires that the Governor ensure that Rapid Response and appropriate career services are delivered to all workers who are covered by a certified TAA petition. In addition to the Rapid Response services, American Job Centers can also provide supportive services relating to child care, transportation, dependent care, housing assistance, and needs-related payments, and may also provide career

services described in Section 4 of this TEG. TAA generally provides case management and employment services, training, income support, job search allowances, relocation allowances, wage supplements for older workers, and a health coverage tax credit for TAA-certified workers. Strict deadlines must be met if individuals are to take full advantage of the TAA benefits available to TAA-certified workers. Barriers to service delivery to this population should be eliminated in order to maximize all the resources available in the one-stop delivery system.

Of equal importance is serving workers who need assistance in filing a petition, or workers for which a petition for TAA eligibility is pending (under investigation), so that the duration of unemployment is minimized. Since most workers who appear to be threatened with layoff or to be separated from employment due to increased imports or a shift in production of articles by their employer or employer's customers are likely to meet dislocated worker eligibility criteria, these individuals should enter the American Job Center network immediately following the announcement of a layoff. They must be assisted in filing a petition with the Department (and the Governor) requesting certification as workers adversely affected by foreign trade. Immediately beginning the process of needs and skills assessment improves TAA participation rates and allows individuals more time to consider all of the options available to them, even before these workers may become eligible for TAA. Section 221(a)(2)(A) of the Trade Act of 1974, as amended, requires the provision of "appropriate career services" to workers covered by a Petition for Trade Adjustment Assistance. These services, in addition to Rapid Response, must be provided when the petition is filed, regardless of whether the petition is certified. Note that adversely affected workers, certified under a Petition for Trade Adjustment Assistance under the Trade Act of 1974, as amended, are, by definition, Dislocated Workers under WIOA.

WIOA and TAA Program funds must be managed in a coordinated manner to best meet the needs of the workers while abiding by all applicable statutes, regulations and federal policies. The Trade Act, as amended, contains provisions allowing the costs of a training program approved under the Act to be paid by TAA funds or from other sources, but does not allow duplication of payment of training costs. Those authorities and restrictions are detailed in 20 CFR 617.25(b). Under certain circumstances, the costs of training may be shared, but such an arrangement must not authorize reimbursement from TAA funds of any training costs that were incurred before a participant was certified and determined individually eligible for TAA and that training was TAA-approved. Additionally, the TAA Governor-Secretary Agreement, Section E, requires that the TAA Program will be the primary source of assistance to adversely affected workers covered by a certification and that to the extent adversely affected workers covered by a certification enrolled in the TAA Program require assistance or services not authorized under the TAA Program, or for which TAA Program funds are unavailable or insufficient (including for required employment and case management services), such assistance will be made available through the American Job Center network.

TAA-certified workers may receive WIOA-funded training otherwise provided under TAA under limited circumstances. The most common circumstance is when a TAA petition has been filed by or on behalf of a group of workers but a determination of group eligibility has

not been made. In this case WIOA funding should be used for training in the short-term, until an affirmative decision is rendered after a completed TAA investigation and the state agency operating the TAA Program as an agent of the United States determines the worker's individual eligibility and approves the training. In the event a negative decision is rendered and the petition is denied, the worker can continue as a WIOA participant. Systems must be in place to seamlessly accommodate a change in the funding of training, as appropriate, after TAA program approval is obtained. Training may be modified by the TAA Program to allow a worker additional training under the TAA Program in order to meet retraining needs as indicated in individual reemployment plans. Such a participant may remain enrolled in WIOA and the TAA Program as the individual may need continued career and supportive services through WIOA. To effectuate this seamless service, the states should ensure that the six criteria for the approval of training under Trade, found at 20 CFR 617.22 are used for determining the appropriateness of training. Also note, under co-enrollment, training is a benefit available to TAA-certified adversely affected incumbent workers. See Section D.2. of TEGL No. 5-15, *Change 1* for additional information regarding the training benefit for adversely affected incumbent workers.

WIOA allows up to 75 percent reimbursement to employers for OJT (see Section 14 of this TEGL), while the TAA Program allows reimbursement up to 50 percent of the wage rate, the cost of providing the training, and additional supervision related to the training. For OJT approved training for a co-enrolled TAA participant, the TAA Program may reimburse employers up to 50 percent, and WIOA may reimburse employers up to an additional 25 percent, to bring the total reimbursement to employers up to 75 percent to align TAA program benefits with WIOA flexibilities provided that the State and Local policies provide for a 75 percent reimbursement rate.

21. Inquiries. Questions regarding this guidance should be directed to the appropriate ETA regional office.

22. Attachments.

- Attachment I: References
- Attachment II: Participation Level Services Chart for Adult, Dislocated Worker, and Wagner-Peyser Act Employment Service
- Attachment III: Key Terms and Definitions