

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION UC/Approved Training
	CORRESPONDENCE SYMBOL OWS/DL
	DATE August 26, 2009

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER No. 2-09

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

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Approved Training for the Unemployment Insurance Program Recommended Policies

1. Purpose. To encourage states to review their policies and procedures on state-approved training for the unemployment insurance (UI) program and to provide recommended policies.
2. References. Section 3304(a)(8) of the Federal Unemployment Tax Act (FUTA); the Workforce Investment Act (WIA); Training and Employment Guidance Letter (TEGL) No. 21-08 and TEGL No. 21-08, Change 1; the Draft Legislation to Implement the Employment Security Amendments of 1970 (commonly called the “Orange Book”); Unemployment Insurance Program Letter (UIPL) No. 1276 (July 22, 1974); and UIPL No. 2-96 (October 5, 1995).
3. Background. TEGL No. 21-08 encouraged states to widen the types of training approved and the conditions under which education or training is considered “approved training” for purposes of the state’s UI law during economic downturns. This TEGL is issued to further encourage states to widen the types of training approved for UI beneficiaries and to provide more specific guidance on revising state policies.

Section 3304(a)(8), FUTA, requires, as a condition of employers in the state receiving credit against the Federal unemployment tax, that—

Compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

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As explained in TEGL No. 21-08, this provision was added to Federal law to assure that UI eligibility criteria, such as actively seeking work, were not an impediment to the individual improving his or her prospects of employment by participating in training. Except for UIPL No. 1276, which stated that any criteria for approving training must be “reasonable,” and UIPL No. 2-96, which discussed the approval of training for individuals who reside in or file from another state, the Department has not updated its guidance since the FUTA provision was added in 1970. Similarly, even though the labor market and economy have significantly changed, many states have not updated their training approval requirements.

In developing this TEGL, the Department consulted with states to determine current practices and to learn where policies may need to be updated. The Department has found that the share of UI beneficiaries participating in approved training varies widely among states. According to data derived from the Department’s Benefit Accuracy Measurement system, in three states, UI beneficiaries in state- approved training account for over four percent of all weeks claimed in the state; while in four states, UI beneficiaries in state- approved training account for less than one percent of all weeks claimed. While general labor market conditions in states may in part account for this disparity, state training approval policies may also be a factor. As a result, the Department, through this advisory, is encouraging states to determine if their policies contribute to low rates of approved training and to revise policies where appropriate.

4. Recommendations for Law, Regulations, and Policy. Following is a list of areas for the states to examine in reviewing their state law, regulations, administrative procedures, and policy (hereafter referred to as “policy”) regarding approved training. This is not an all-inclusive listing of all policies related to approved training. Instead, it emphasizes areas where the Department believes review may be especially appropriate.

- a. Consideration of Current Economic Outlook When Reviewing an Individual’s Circumstances. When making determinations whether training is approved for UI purposes, states generally require a finding related to the availability of work in the individual’s usual occupation. For example, there must be a finding that suitable work in the individual’s usual occupation does not exist, or that the demand for such work has substantially diminished. Some states also require that an individual’s skills be in need of upgrading due to technological or other advances. State UI agencies already have tools and resources available to help make these determinations regarding availability of work and possible need for training. States may take into account whether the worker is identified as likely to exhaust benefits through the state’s Worker Profiling and Reemployment Services system. States may also take advantage of the assessments performed by the workforce system when they determine whether to fund training for an individual under the Workforce Investment Act (WIA), as discussed below.

In recessionary times, assessments of the availability of work in the individual’s usual occupation might be based on evidence about a shortage of jobs in the individual’s customary occupation, as well as the individual’s work search history. The Department encourages states to approve training that would enable individuals to obtain jobs in a different occupation or enhance the individual’s skills in preparation for economic recovery and the return to the customary job. As discussed below, in those cases, it may be particularly appropriate to approve post-secondary education.

b. WIA-Funded Training. Many state laws already provide that WIA-funded training will automatically be considered UI-approved training. (Note that an individual enrolled in training approved under the Trade Act must be considered to be in approved training for UI purposes. See Section 236(d) of the Trade Act, as amended.) For purposes of determining if the training shall be funded under WIA, a One-Stop Career Center counselor reviews the individual's job history, education, abilities, and job prospects to determine whether that training is the most appropriate avenue to permanent employment. In such a case, because an examination of appropriateness has already been performed by a trained workforce professional, the state UI agency should consider this training to be approved for UI purposes.

c. Remedial Courses. Many remedial training courses are known to generally improve the individual's employability even if they do not lead to a specific occupation. Such courses include but are not limited to those that improve an individual's understanding of the fundamentals of English or mathematics, provide adult basic education, or result in a general equivalency diploma (GED). The Department recommends that states approve such courses for UI purposes.

d. Post-Secondary Education. In many cases, programs in community colleges and other post-secondary institutions are specifically designed to lead to occupations in fields such as criminal justice, health care, information technology, weatherization/green construction, and numerous others. Similarly, many four-year programs may lead to a degree that qualifies the individual for specific occupations, such as teaching or nursing. Some states have a policy of not approving certain post-secondary education programs even when they lead to a specific occupation. Given the increasing number of occupations for which post-secondary certificate-oriented or degree programs is essential and which is provided by educational institutions, the Department encourage states to approve such programs.

In addition, states are encouraged to adopt a flexible policy, based on individual circumstances, that permits, in recessionary periods, approvals of academic courses leading to a degree or certificate that may not lead to specific occupations. Particularly during downturns when exhaustion rates are high, periods of unemployment provide opportunities for laid-off workers to develop new skills, so that employers will benefit from a skilled workforce when the economy recovers.

e. Limits for Completing Training. In some states, approval of training is limited to courses that can be completed within a relatively short period of time, such as twelve months. Given that many certificate and degree programs require a minimum of two to four years for completion, such limitations can prevent approval of a significant number of valuable educational and other training opportunities.

The Department recommends that any such time limitation be lengthened. Specifically, state policy should provide for approval if, at a minimum, the individual expects to complete training, or a degree or certificate course within two years. The Department recommends a flexible policy that would allow for even lengthier timeframes during recessions when extended unemployment benefits are available.

f. Part-Time Training. In some states, approval of training is limited to full-time training, as defined by the state. Generally, participation in part-time training does not raise a UI eligibility issue since the individual will be available for other work. (For example, an individual attending courses in the evening would be available for work during normal working hours.) However, in some cases, limiting approval to full-time training may preclude training opportunities for individuals working reduced work-weeks who are unable to attend full-time training and may preclude participation in certain training opportunities that are only available during periods when the individual is expected to be available for work (that is, during regular working hours). States should consider approval of part-time training for individuals working a reduced work-week or that occurs during regular working hours.

g. Distance Training. As technology evolves, individuals may participate in “virtual classrooms” where the individual must participate on-line at specific times. States should consider developing a policy for determining under what conditions such distance learning qualifies as “approved training.”

Generally, if distance learning does not require specific times for participation, it will not affect eligibility since the individual can perform on-line learning tasks at his/her convenience while still meeting availability and work-search requirements. However, in cases where required on-line participation may conflict with an occupation’s regular working hours, the state should consider treating such training the same as any classroom training.

h. Disqualification Provisions. Most states require individuals to be available for work and actively seeking work for specified periods between training. (For example, if the break between training courses is more than four weeks, a state may require an individual to seek and accept work.) However, some states disqualify individuals who accepted work during a break in training when they leave work to return to training. The Department recommends that state laws include a provision that an individual will not be disqualified for leaving a job to resume a training course or program.

5. Streamline Approval Procedures. In many states, the UI agency does not advise individuals if the training is approvable for UI purposes until after the individual has attended a week of training and claimed UI for that week. This procedure may discourage individuals from entering training since they will not know the effect on UI until after they have attended class. States are strongly encouraged to establish procedures that approve/disapprove the training before the individual registers for a class. The Department has identified the following state practices that facilitate attainment of this goal:

- Delegating training approvals to One-Stop Career Centers. In these cases, the One-Stop Career Center counselor will make an assessment of the individual’s work history, job expectations, and training needs prior to approving a training course with an approved training provider even if it is not WIA-funded training. The UI agency will accept this determination.

- One-Stop Career Center counselors make a recommendation that training be approved. This recommendation is immediately forwarded to the UI agency, which determines whether the training is approvable for UI purposes.
- The UI system establishes its own pre-approval process. In this case, the individual would complete an application with the assistance of UI staff and the UI agency would issue a determination.

States should be aware that, for purposes of reporting nonmonetary determinations, it is not necessary that the individual claim a week in which the training occurs. As a result, states may report UI agency determinations as nonmonetary determinations for purposes of the workload counts on the UI-3 report and for the ETA 207 report. (Office of Management and Budget Control Nos. 1205-0132 and 1205-0150, respectively.)

6. Approved Training Providers. As a result of its consultations with states, the Department learned that, while each state has a method for identifying approved training providers within its borders (e.g. use of the state’s Department of Education or WIA Eligible Training Provider lists), it does not always include distance training (due to concerns that the provider may be a “diploma mill”) or training provided in another state. To help states in identifying approved training providers out-of-state, states should consider using other states’ WIA eligible providers lists which may be found via on-line search engines. The following may also be of assistance to states:

- The Department of Education’s National Center for Education Statistics’ College Navigator, a free consumer information tool with information on nearly 7,000 postsecondary institutions in the United States, can be found at:

<http://nces.ed.gov/collegenavigator/>

- For purposes of benefits provided under the GI Bill, the Department of Veterans Affairs maintains a web site with approved education and job training programs as well as a list of approved institutions (including correspondence schools) at:

http://www.gibill.va.gov/GI_Bill_Info/Search_Programs.htm

- The Council for Higher Education Accreditation maintains a database of institutions and programs accredited by recognized United States accrediting organizations at:

<http://www.chea.org/search/default.asp>

7. Noncharging. Benefits paid to individuals attending state-approved training are not required, as a condition of receiving the additional credit against the Federal unemployment tax under Section 3303(a)(1), FUTA, to be charged to an otherwise chargeable employer’s account. Instead, such amounts may be distributed among all employers. Since an individual in approved training is relieved from requirements relating to availability for work, seeking work, and refusing work, the individual’s claim does not represent the employer’s “experience with respect to unemployment,” nor does it fall within “other factors bearing a direct relation to unemployment risk.”

8. Action. State administrators are strongly encouraged to review their laws, regulations, policies, and procedures regarding approved training in light of this advisory, and to take steps to expand training opportunities for UI beneficiaries as appropriate.
9. Inquiries. Questions should be addressed to your Regional Office.