

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	<b>CLASSIFICATION</b> TAA/Same-Sex Marriage
	<b>CORRESPONDENCE SYMBOL</b> OTAA
	<b>DATE</b> June 18, 2014

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 27-13**

**TO:** STATE WORKFORCE AGENCIES  
STATE WORKFORCE LIAISONS  
AFFILIATE AMERICAN JOB CENTER MANAGERS  
COMPREHENSIVE AMERICAN JOB CENTER MANAGERS  
STATE WORKFORCE ADMINISTRATORS  
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS  
STATE LABOR COMMISSIONERS  
TRADE ADJUSTMENT ASSISTANCE LEADS

**FROM:** PORTIA WU /s/  
Assistant Secretary

**SUBJECT:** Impact of the U.S. Supreme Court’s Decision in *United States v. Windsor* on the Trade Adjustment Assistance Program.

**1. Purpose.** To advise State Workforce Agencies or agencies designated by Governors as “Cooperating State Agencies” (CSAs) (also jointly referred to as “states”) of the *Windsor* decision for the Trade Adjustment Assistance (TAA) program and the need for CSAs to revise their policies to conform to the change in federal policy on same-sex marriages as those changes affect the TAA program.

**2. References.**

- *United States v. Windsor*, 570 U.S. 12, 133 S. Ct. 2675 (2013);
- Chapter 2 of Title II of the Trade Act of 1974, as amended (Pub. L. 93-618) (1974 Act, and, as amended, Trade Act);
- Trade Adjustment Assistance Reform Act of 2002, Division A, Title I, Subtitle A of the Trade Act of 2002 (Pub. L. 107-210) (as amended by the Miscellaneous Trade and Technical Corrections Act of 2004, (Pub. L. 108-429) (TAARA));
- Trade and Globalization Adjustment Assistance Act of 2009, Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009 (TGAAA), (Pub. L. 111-5);
- Omnibus Trade Act of 2010 (Pub. L. 111-344) (Omnibus Trade Act);
- Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112-40) (TAAEA);
- 29 CFR part 617, Trade Adjustment Assistance for Workers Under the Trade Act of 1974;
- 20 CFR part 1010, Application of Priority of Service for Covered Persons;

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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- Training and Employment Guidance Letter (TEGL) No. 7-13, Operating Instructions for Implementing the Sunset Provisions of the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011;
- TEGL No. 10-11, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011;
- TEGL No. 22-08, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, and;
- TEGL No.26-13, Impact of the U.S. Supreme Court’s Decision in *United States v. Windsor* on Eligibility and Services Provided Under Workforce Grants Administered by the Employment and Training Administration;
- Unemployment Insurance Program Letter (UIPL) No. 14-14, Effect of the U. S. Supreme Court’s Decision in *United States v. Windsor* on the Federal-State Unemployment Compensation Program

**3. Background.** On June 26, 2013, the United States Supreme Court found that Section 3 of the Defense of Marriage Act (DOMA, codified at 1 U.S.C. section 7) violates the U.S. Constitution. That section amended the rules of construction for federal statutes to require that, for purposes of federal law, the term “marriage” be interpreted to mean “a legal union between one man and one woman as husband and wife,” and the term “spouse” be interpreted to mean “a person of the opposite sex who is a husband or a wife.” Because Section 3 no longer controls the definition of “marriage” or “spouse” under federal law, it no longer bars the recognition of same-sex marriages in the operation of federal programs, including the TAA program. In implementing the *Windsor* decision, the Department of Labor’s policy is to recognize lawful same-sex marriages as broadly as possible to the extent that federal law permits, and to recognize all marriages valid in the jurisdiction where the marriage was celebrated—i.e., the “state of celebration.”

**4. ETA Policy On Same-Sex Marriages.** Consistent with the policy of the Department of Labor, ETA’s policy is to recognize all marriages (including same-sex marriages) that are lawfully entered in the state of celebration. ETA will recognize the marriage even if the marriage is not recognized in the state where the married individual resides. For the purposes of this TEGL, “State” as used in reference to either the state of celebration or the state where the married individual resides means any state, Indian tribe, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or any other territory, or possession of the United States, or any foreign jurisdiction that has the legal authority to sanction marriages if the marriage could have been entered into in a state.

At the time of issuance of this TEGL, 19 states and the District of Columbia have legalized same-sex marriage. State laws may change. For a current list of States which have legalized same-sex marriage, please visit the following Web site:

<http://answers.usa.gov/system/templates/selfservice/USAGov/#!portal/1012/article/4109/Same-Sex-Marriage-Laws>.

## **5. ETA Policy On Same-Sex Marriages for the TAA Program.**

States carry out the TAA program provisions of the Trade Act of 1974, as amended, as agents of the Department under agreements between the Governors and the Secretary of Labor. In accordance with those agreements, and the state's Trade Adjustment Assistance Program Annual Cooperative Financial Agreement and Unemployment Insurance Program Annual Funding Agreement, the states agree to carry out the operating instructions issued by the Department for the TAA program, including guidance issued in the form of TEGs and UIPLs as they apply to the TAA income support benefit referred to as "trade readjustment allowances" or TRA. As described in TEG No. 7-13, the states have been operating four TAA programs under the Trade Act provisions of the TAARA, the TGAAA and the Omnibus Trade Act, and the TAAEA, since January 1, 2014. These versions of the TAA program are referred to as: the 2002 Program, the 2009 Program, the 2011 Program, and Reversion 2014. Consistent with ETA's policy to recognize same-sex marriages as broadly as legally possible, this TEG advises CSAs of the ETA policy on same-sex marriages and encourages CSAs, in applying the definition of "family" in TAA regulations, to include same-sex spouses where that term is used in determining a TAA benefit under all four versions of the TAA program operated by the states in applying the regulatory definition of "family" where appropriate.

The definitions section of the TAA regulations defines "family" to include "a spouse." 20 CFR 617.3(q).<sup>1</sup> The regulations do not further define "spouse." Therefore, consistent with ETA's policy announced above, we encourage states to include same-sex spouses of a marriage that is valid in the "state of celebration" when their CSAs apply the TAA regulations' definition of "family."

The term "family" comes up in several sections of the TAA regulations, including:

- § 617.22 Approval of training. As a condition of approving training for an adversely affected worker, the state must find, among other things, that the worker is qualified to take and complete the training. For example, the state must evaluate the worker's financial circumstances, and whether "personal and family resources" are available to help him/her complete the training if his/her UI or TRA payments are exhausted before the end of the training.

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<sup>1</sup> 20 CFR 617.3(q) provides: "*Family* means the following members of an individual's household whose principal place of abode is with the individual in a home the individual maintains or would maintain but for unemployment: . . . (1) A spouse; . . . [.]"

- §§ 617.40 - 617.48 Subpart E – Relocation Allowances. TAA benefits include a relocation allowance, which pays certain expenses for eligible adversely affected workers and their families to relocate within the United States when the TAA participant must move to take a job. When moving costs for a family are considered – not just costs for an individual – a greater amount is potentially subject to reimbursement.
- § 617.55 Overpayments; penalties for fraud. In cases of improperly paid TAA benefits, a state agency may waive recovery of the overpayment when the beneficiary was not at fault and requiring repayment “would be contrary to equity and good conscience.” In determining whether equity and good conscience exist, the state agency must consider, among other things, “all potential income” and “all cash resources available or potentially available” to both the beneficiary and his/her family during the time period being considered, and whether requiring repayment would cause financial hardship. 20 CFR 617.55(a)(2)(ii). This standard continues to apply for participants in the 2002 Program and the Reversion 2014 Program, as described below.

As the Department explained in TEGL No. 22-08, the TGAAA established a more relaxed standard than 20 CFR 617.55(a)(2)(ii) for determining whether to waive non-fraudulent overpayments for 2009 Program participants. The TAAEA applied the TGAAA standard to the 2011 Program participants and also provided that the statutory provision containing this standard sunset on December 31, 2013, and therefore would not apply to Reversion 2014 participants. See TEGL No. 10-11, explaining that the operating instructions in TEGL No. 22-08 continued to apply to 2011 Program participants, except for changes addressed in that TEGL that did not include the overpayment recovery provision of the TGAAA; and TEGL No. 7-13, advising states to apply 20 CFR 617.55(a)(2)(ii) to overpayments to workers covered under petitions filed beginning January 1, 2014 (Reversion 2014 participants). Therefore, application of the ETA policy on same-sex marriages would only affect overpayment determinations for 2002 Program Participants and Reversion 2014 participants.

In interpreting the term “family” in these regulations, where applicable, we encourage CSAs to consider same-sex partners in determining: (1) the level of resources available to help TAA participants complete assigned training; (2) the total relocation costs the allowance must cover; and (3) whether requiring a participant in either the 2002 Program or Reversion 2014 to pay back an overpayment will cause financial hardship.

As explained in UIPL No. 14-14, Effect of the U. S. Supreme Court’s Decision in *United States v. Windsor* on the Federal-State Unemployment Compensation Program, this interpretation has no effect on state UC law, when state law does not depend on federal law for definitions or interpretations. In administering TRA, the law of the state in which the applicant is entitled to UC applies. See 20 C.F.R. 617.16 and 617.59. Therefore, this interpretation has no effect on the administration of TRA.

## **6. ETA Policy for Eligible Spouses for Veterans' Priority of Service**

Priority of service applies to all DOL-funded training programs, including TAA. 20 CFR 1010.210. Please refer to the recently published guidance, TEGL No. 26-13, Impact of the U.S. Supreme Court's Decision in *United States v. Windsor* on Eligibility and Services Provided Under Workforce Grants Administered by the Employment and Training Administration, for additional information interpreting the term "eligible spouse" under the ETA policy on same-sex marriages. When applying the veterans' priority of service in all four versions of the TAA program, we encourage CSAs to include, for the purpose of applying the definition of an "eligible spouse" under 20 CFR 1010.110, a TAA participant who is the same-sex spouse of a veteran where the marriage was valid in the state of celebration.

**7. Action Requested.** Now that DOMA no longer bars the recognition of same-sex marriages in federal statutes such as the Trade Act, and consistent with ETA's policy to recognize lawful marriages as broadly as possible, ETA encourages all states to review their policies and procedures currently in place on the recognition of same-sex marriages and revise them as soon as possible to allow CSAs to administer the TAA program in accordance with this TEGL. ETA will consider such policies as effective as soon as the CSA indicates it is effective. (ETA will consider them effective immediately unless otherwise indicated.)

ETA is not asking states to make their policies retroactive. For example, states do not need to reconsider determinations of training eligibility of current TAA participants to take into account the "personal and family resources" of same-sex spouses. However, if former applicants for TAA benefits may have been declined eligibility because of your previous policy and may now be eligible by application of the new policy, CSAs may decide to reconsider those negative determinations.

**8. Inquiries.** Please direct any questions about DOL's recognition of same-sex marriages to your appropriate ETA regional office.