Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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April 29, 2009

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Solis,

We are writing to express our strong opposition to the U.S. Department of Labor's ("Department") plans to mandate that state "merit" staff (also known as state Employment Service (ES) employees) administer the newly improved and expanded Trade Adjustment Assistance (TAA) for Workers program. Our objections are grounded in the clear expression of our legislative intent in passing the new TAA law as well as our serious policy concerns.

As you know, the new TAA law enacted earlier this year was a bipartisan and bicameral compromise reached by leaders of the House Ways and Means and Senate Finance Committees to improve and expand the TAA program. A crucial part of this compromise was the conferees' agreement to drop the 2007 House-passed legislation's requirement that state ES staff administer the TAA program, which was not contained in bipartisan TAA legislation developed by Senate Finance Committee leaders.

The Department's assertion that it has the authority to mandate such a change because the TAA law has always been and remains silent on the state ES staff issue is a misreading of the legislative history behind this carefully negotiated legislation. The new TAA law is <u>not</u> silent on the issue because the House-passed bill contained such a mandate, which the conferees specifically agreed to drop to reach a final compromise. Therefore, this legislative history demonstrates that Congress specifically considered and intentionally rejected such a mandate. We are disappointed that the Department intends to reverse, rather than respect, this recent decision that paved the way for the final TAA conference agreement supported by key House and Senate leaders in both parties.

We therefore strongly disagree with the Department's planned state ES staff mandate (whether by rulemaking or contract with the states) because it would be inconsistent with Congressional intent related to the new TAA law and ignores, and even undermines, the bipartisan spirit in which the new TAA law was negotiated and passed. Accordingly, we urge the Department to not move forward with such a mandate. If the Department decides to proceed anyway, at a minimum, it should not prejudge the content and outcome of its planned rulemaking. In either case, we ask that the Department not communicate to Governors on this issue as part of the Department's instructions to the states shortly on the implementation of the new TAA law.

In addition to our legal objections, we are deeply concerned about the profoundly negative impact that the Department's planned state ES staff mandate would have on the 23 states and Puerto Rico that use a mix of state merit staff, local staff, and non-merit staff, according to 2007 data from the Department, to administer TAA program services, particularly to conduct skill assessments as part of individual employment plans for TAA customers. A mandate to use state ES staff exclusively would mean that the program can no longer be administered by local staff, private sector contractors, 501(c)(3) non-profit contractors, or faith or community-based organization contractors, as so many states do. The planned mandate would force Governors to disassemble service delivery systems built up over years to administer TAA, at potentially significant cost during these difficult economic times. Especially while so many states are already struggling to adequately serve record and still rising numbers of unemployed workers, this proposed staffing change is an unneeded, unwelcome, and counterproductive distraction, to say the least.

Moreover, these 23 states plus Puerto Rico have determined that administering the program as they have done is the most effective means of providing services to their citizens. Specifically, the flexibility allows for a high degree of "one-stop" integration of functional services provided through the Workforce Investment Act (WIA), together with TAA. WIA staff are usually not part of the state ES system. Therefore, these 23 states and Puerto Rico would clearly have their service delivery systems impacted if required to terminate services through non-state ES staff. We understand that the Department is now suggesting that somewhat fewer states would be impacted, but we have seen no evidence of this smaller number and, in any event, the number of states affected is still significant.

We understand that customers who are enrolled in WIA receive more in-depth assessment, counseling, case management, and post-training assistance, but that the assessments available to TAA customers through state ES staff are limited in scope and depth. For example, there is evidence that state ES staff are not generally trained in vocational counseling, thus limiting the quality of ES-provided assessments, regardless of the type of assessment used. We also understand that assessments provided to customers co-enrolled with WIA are generally considered to be of higher quality, more in-depth, and more likely to be provided by a staff person with some training in vocational counseling.

In short, the Department's planned mandate that services be administered by state ES staff would make it very difficult for TAA participants to receive the full range of wrap-around services available under WIA and obtain the very best counseling. As such, we believe that any such mandate would be completely inconsistent with the goal of ensuring the newly improved and expanded TAA law helps individuals retrain and get back to work quickly and in good jobs.

Thank you for your consideration of our views. We look forward to receiving a response from you shortly about how you plan to proceed in light of our strong concerns.

Sincerely,

Dave Camp

Sam Johnson

Devin Nunes

Geoff Davis

John Linder

Wally Herger

Ginny Brown-Waite

Pat Tiberi

Eric Cantor