

**TRADE ADJUSTMENT ASSISTANCE REFORM ACT OF 2002  
TRADE READJUSTMENT ALLOWANCES (TRA) POLICY MANUAL**

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## **BACKGROUND**

The Trade Adjustment Assistance for Workers Program (TAA program) was first established in the Trade Act of 1974 as a tool to retrain trade impacted workers and help them find suitable employment. The TAA program had a two-step process. First, a group of workers (or other specified entity) file a petition for certification of eligibility with the Office of Trade Adjustment Assistance (OTAA). Second, workers who are part of a group covered by a certified petition apply individually to a state for benefits and services.

## **OVERVIEW**

The Trade Adjustment Assistance Reform Act of 2002 (Public Law 107-210) reauthorized and expanded the scope of the TAA program. It also repealed the North American Free Trade Agreement Transitional Adjustment Assistance (NAFTA-TAA) program, which had been added to the TAA program in 1993 to provide benefits to workers who lost their jobs because of trade with Mexico and Canada after NAFTA. The NAFTA-TAA program was no longer necessary because the 2002 amendments extended the same favorable TAA coverage to workers who lost their jobs because of shifts in production to other countries with which the United States had trade agreements, treaties or where there was also a likelihood of increased imports because of shifts in productions to Mexico and Canada.

The 2002 amendments expanded coverage to adversely impacted secondary workers, whose layoffs could be attributed to trade impacts demonstrated by TAA certifications of workers for companies considered upstream suppliers or downstream producers to the certified primary firm.

The 2002 amendments also added major features to the TAA program by creating the Health Coverage Tax Credit (HCTC) and the Alternative Trade Adjustment Assistance (ATAA) program for older workers. The 2002 Program applies to workers covered under petitions filed on or after November 4, 2002.

## **TRADE READJUSTMENT ALLOWANCES (TRA)**

Trade Readjustment Allowance (TRA) provides financial support to participants while enrolled in full-time TAA approved training or conducting a work search under a waiver of training. TRA is not available until all eligibility for unemployment insurance (UI) benefits and applicable extensions are exhausted. There are three types of TRA:

- **Basic TRA** is payable if the TAA participant is enrolled or participating in TAA approved training or has obtained a waiver of training requirement. Basic TRA can also be paid to participants who are conducting a work search following training.
- **Additional TRA** is payable only if the TAA participant is actively attending TAA approved training and has exhausted all rights to Basic TRA.
- **Remedial TRA** is payable only to TAA participants who received remedial education in an approved training plan. It is payable when Basic and Additional TRA are exhausted but only when the participant is actively attending TAA approved training.

## **TRA ELIGIBILITY REQUIREMENTS**

(20 CFR 617.11)

To be eligible for TRA benefits, adversely affected workers must meet the following requirements:

- *Certification* - The worker must be an adversely affected worker covered by a certification. The worker must be laid off because of lack of work from adversely affected employment.
- *Separation* - The worker's first qualifying layoff must have occurred on or after the impact date of the certification and on or before the expiration date of the certification;
- *Wages and Employment* - In the 52-week period ending with the week of the worker's first qualifying separation or any subsequent qualifying layoff under the same certification, the worker must have had at least 26 weeks of employment at wages of at least \$30 or more a week with the certified employer.
- *Entitlement to UI* - At the time of the first layoff on or after the impact date, the worker must be monetarily eligible for unemployment. The TAA eligible worker does not have to file a claim, but they must have had enough hours of work and wages to establish a benefit year.
- *Exhaustion of UI* - The worker must have exhausted all rights to unemployment insurance benefits or applicable extensions.
- *Extended Benefits (EB) Work Test* - The EB work test requirement is also applicable to claimants for basic TRA, except when the individual is in and/or participating in an approved TAA training program as provided at 20 CFR 617.17 (b)(2).
- *Participation in TAA training* - The individual must be enrolled in or participating in TAA training; or have completed training following qualifying separation (only basic TRA); or have received a waiver from the TAA training (only basic TRA).

If the worker does not meet the minimum 26-week employment and wage requirement, a week of employment shall be added, up to a maximum of 7 weeks, for each week that one of the following conditions exist:

- The certified employer authorized leave for vacation, sickness, injury, maternity or inactive duty or active duty military service or training;
- A worker's employment was interrupted to serve as a full-time representative of a labor organization in the affected firm or subdivision.

The trade-affected worker shall be eligible for up to a maximum of 26 weeks for each week that one of the following conditions exists:

- The worker could not work for the adversely affected employer due to a disability compensable under state or federal worker's compensation laws;
- The worker is on call-up for active duty in reserve status in the US armed forces after August 1, 1990.

If TAA eligible workers are not eligible for TRA benefits because they did not meet the qualifying requirements, they may still be eligible to apply for training, job search allowances, relocation allowances, wage subsidy for older workers program and reemployment services.

### **Determining the Parent Claim**

(20 CFR 617.13)

The first qualifying layoff is the first layoff of at least seven consecutive days after the impact date of the petition. The unemployment claim in effect at the time of the first qualifying layoff is the TRA parent claim. The weekly benefit amount for Basic and Additional TRA is the same as the weekly benefit amount of the TRA parent claim.

The most recent claim is not always the TRA parent claim. The Washington State TRA Coordinator will determine the TRA parent claim when determining eligibility for TRA.

### **TRA DEADLINES AND EXCEPTIONS**

(20 CFR 617.19)

To receive TRA, the TAA participant must be enrolled in TAA approved training by;

- The last day of the 16th week after the TAA participant's most recent qualifying layoff; or
- The last day of the 8th week after the week that the Department of Labor issued the certification.

To receive Basic TRA, TAA participants must meet one of the following criteria:

- Actively participate in TAA approved training;
- Be within 30 days of the start of TAA approved training;
- Have completed a TAA approved training plan and actively seeking work; or
- Be approved for a [waiver of the training deadline](#).

There is a 60-day waiting period after TAA certification before the worker can access TRA benefits. For example: a worker is laid off January 6, applies for UI and exhausts claim July 6, 2012. However, his company is not TAA certified until July 15. Even though claimant exhausted regular UI and applies for TAA July 16, the TAA participant must wait 60 days after the July 15 certification before accessing TRA benefits.

### **Exceptions**

(TEGL 11-02) (TEGL 8-11)

#### ***45 Day Extension of the Training Waiver Deadline for Extenuating Circumstances***

A 45 day extension for an extenuating circumstance may be granted to the individual if the Washington State TRA coordinator approves the extension before the end of 45 days after the later of the 16/8 week training enrollment deadline.

#### ***Equitable Tolling***

Equitable Tolling is a legal doctrine that permits the suspension of statutory and administrative deadlines where equity demands. This means that deadlines may be extended in circumstances in

which a participant acted with due diligence, but there were egregious circumstances. It must be a situation in which the participant could not reasonably have been expected to meet a deadline or fulfill a requirement regardless of their effort. An example in which Equitable Tolling may be applied is if a participant was not informed of a deadline and, because of that, missed the deadline.

Equitable Tolling is NOT a statutory provision requiring a waiver of deadlines for “good cause.” For equitable tolling to apply, one must show that a participant acted with due diligence, whether or not the State was at fault. Equitable tolling is different than “extenuating circumstances” and they are separate determinations.

When equitable tolling happens, many deadlines are modified. Generally, the deadlines shift to starting from the date that the participant becomes aware of the deadline. Under 2002 law, for example, the deadline for applying for Additional TRA (which is originally 210 days from petition certification) changes to 210 days from when the participant learns of the deadlines.

### **WAIVER OF TAA TRAINING REQUIREMENTS TO RECEIVE TRA BENEFITS**

(20 CFR 617.19) (Section 115 of the 2002 Act) (Public Law 107-210) (TEGL 11-02 D.3)

The intent of Trade Act program is to return the dislocated worker back to suitable employment quickly. This can be achieved by issuing a waiver from the training deadline to allow Basic TRA benefits while job searching or retraining the worker to provide them with the tools needed to be job ready.

A waiver from the training deadline may be issued to individuals who are TRA eligible. A waiver only applies to Basic TRA benefits, not Additional TRA, as Additional TRA benefits are only payable for those individuals actually participating in an approved training plan.

#### ***Waiver Conditions***

Waivers from the training deadline are used to:

- Allow TAA workers to meet the 16-week after layoff or 8-week (16/8 week) after certification deadline to preserve Basic TRA benefit eligibility;
- Allow TAA eligible participants not in training to collect Basic TRA using the EB work search standard. In most cases this is an interim measure until a training plan is approved.

For internal procedures in the issuance, review and revocation of a waiver refer to TAA Classroom Training Policy #3045 (P.2) and Waiver from Training Guidelines

Unless enrolled in training, individuals on state extended benefits, or Basic TRA must be directed to conduct a more enhanced job search using EB work search criteria.

An individual must meet at least one of the six (6) waiver conditions before issuing a waiver of training.

1. Recall- An individual receives a written recall from the Trade certified, separating employer. Obtain documentation for file.
2. Marketable skills - Individual has marketable skills to conduct an effective work search and there is ‘reasonable expectation of employment at equivalent wages in the foreseeable future.’
3. Health - Training can be waived if an individual is unable to participate in training due to health issues. A letter from a doctor or other appropriate medical documentation is required. While we may allow a waiver for health reasons, the participant must still be able, available and actively seeking work and on an EB work search plan, if receiving state extended benefits, or Basic TRA.
4. Retirement – This waiver reason can be used if we can get written verification from a private pension source, showing that participant is within two years of meeting requirements for an

entitlement to a private pension sponsored by an employer or labor organization. If participant is within two years of receiving regular Social Security benefits, we do not need additional documentation. The individual must still be able, available and actively seeking work and on an EB work search plan.

5. Enrollment unavailable – When an individual is seriously considering a specific training plan but they cannot enroll in the program right away. If training will begin later than 60 days after the date of waiver approval, the reason for the delay in enrollment (the ‘extenuating circumstances’), must be noted.
6. Training not available – When an individual is not able to find training that is reasonably available and at a reasonable cost. Distance learning options may be available, and should be explored, but are not appropriate for all individuals or training programs.

### ***Reasons to Deny Waiver***

Waivers cannot be approved if the individual is past the 16-weeks after layoff or 8-weeks after certification deadline to request a waiver unless the 45 day extension of the training deadline for an extenuating circumstance applies.

### ***Reviewing and Duration of Waivers***

Waivers must be reviewed every 30 days. Waivers are effective for not more than 6 months from the date it was issued. To preserve the worker’s eligibility for TRA, the state TRA Coordinator may approve extending the waiver for another 6 months.

### ***Revoking a Waiver***

Waivers from training need to be revoked anytime the conditions of the waiver are no longer applicable. The participant shall be notified of the revocation in writing and needs to enroll in training the Monday following the date the waiver was revoked.

### ***Waiver Expiration***

At the end of the 6 month waiver period, if a reassessment of the participants’ case does not indicate a need to extend the waiver period, the waiver will expire.

## **BASIC TRA**

(20 CFR 617.11)

To be eligible for Basic TRA benefits, a TAA participant must exhaust regular UI, all extensions, or have an expired claim. The eligibility period for Basic TRA is the 104-week period (130 weeks if remedial education is required) following the week of the participant's last total qualifying layoff from Trade impacted employment. A total qualifying layoff for TRA purposes is a layoff of 7 days or more. The eligibility period is reset following each subsequent qualified layoff, provided the TAA participant meets the criteria for a valid TRA claim. The TRA weekly benefit amount is always the same as the UI weekly benefit amount from the [parent claim](#), even if the 104-week eligibility period is reset. The Basic TRA eligibility period could end before the actual Basic TRA maximum amount is received.

The maximum Basic TRA amount payable is 52 times the TRA weekly benefit amount from the parent claim minus the total sum of unemployment insurance the TAA participant was entitled under that claim and, if applicable, any benefit extensions, regardless of whether or not the TAA participant actually received the benefits. In the case of Washington TAA participants, the regular unemployment insurance entitlement is up to a maximum of 26 weeks.

To receive Basic TRA under the 2002 Reform Act certifications, the TAA participant must:

- Be enrolled in TAA approved training by the later of:
  - The last day of the 16th week after the TAA participant's most recent qualifying layoff; or
  - The last day of the 8th week after the week the Department of Labor issued the certification.

Or

- Be participating in or within 30 days of starting TAA approved training; or
- Have completed a TAA approved training plan and be actively seeking work; or
- Be on a [training waiver](#).

If TAA participants complete approved TAA training and still have a Basic TRA balance, they may continue collecting benefits while doing an EB work search. TAA participants must be fully registered in SKIES, and TAA counselor takes an active role to help participant secure employment.

### **ADDITIONAL TRA**

(20 CFR 617.15) (TEGL 11-02 D.4(3))

Additional TRA can be paid to participants who are entitled to TRA. Payments of Additional TRA may be made only for those weeks during the [52-week eligibility period](#) that the TAA participant is participating in TAA approved training. These funds may not be used for additional time to job search after completing training or during training waiver periods.

### **The 210-Day Bona Fide Request for Training Rule**

(20 CFR 617.15)

To be eligible for Additional TRA, the TAA participant must make a bona fide request for training within 210-days of the most recent qualifying layoff or the certification date of the petition, whichever is later. However, the worker must meet the applicable deadlines to be enrolled in approved TAA training as a condition for the receipt of TRA. The 210-day rule applies to Additional TRA, but not to Remedial TRA.

### **The 52 Week Eligibility Period**

(20 CFR 617.3 (m) (2)) (TEGL 11-02 D.4 (3)(A)(B))

The 52-week Eligibility Period begins:

- Immediately after the TAA participant exhausts Basic TRA; or
- The week that the TAA participant begins participating in full-time TAA approved training (this occurs when training starts after exhausting all rights to UI and Basic TRA).

The participant will receive benefits for a 52 week eligibility period which begins the week TAA approved training starts. Additional TRA benefits can only be paid while participating in full-time training.

Participants who are not eligible for Basic TRA or Additional TRA benefits because they did not meet the qualifying requirements may still be eligible to apply for and receive training, job search allowances, relocation allowances, wage subsidy for older workers program and reemployment services.

### **REMEDIAL TRA**

(20 CFR 617.15) (TEGL 22-02 D.4 (g))

To be eligible to receive Remedial TRA payments, the TAA participant must have remedial education included in an approved TAA training plan.

Remedial TRA follows the last week of entitlement to Additional TRA. It is paid on a basis of one week of Remedial TRA for each week of remedial education completed, to a maximum of 26 weeks. The maximum number of weeks of Additional TRA and Remedial TRA combined is 78 weeks.

Remedial training can occur simultaneously with other vocational training.

### **BREAKS IN TRAINING**

(20 CFR 617.15) (TEGL 11-02 D.4.(f))

Eligibility for Basic and Additional TRA continues during scheduled breaks in training, but only if a scheduled break is no longer than 30 days (not counting weekends and holidays) and all of the following additional conditions are met:

- The TAA participant was participating in TAA approved training immediately before the beginning of the break,
- The break is preapproved in the published academic schedule, or the previously established schedule of training issued by the training provider, or is indicated in the training program approved for the TAA participant; and
- The TAA participant resumes participation in training immediately after break.

### **Payment During a Break**

(20 CFR 617.15)

The following formulas are used to determine a TAA participant's eligibility for payment during a break.

- The break begins on the day following the last day of scheduled training and up to the last day of the break preceding the next scheduled day of training. Weekend days are not counted unless they are normally scheduled for training. Official state and federal holidays are not counted.
- If the number of days is 30 days or less, the TAA participant can be paid during the entire break.
- If the number of days is more than 30 days, the TAA participant cannot be paid Basic or Additional weeks of TRA during the full weeks of the break. This includes summer breaks.
- If a training facility closes before a scheduled break because of an emergency situation, any days of closure due to the emergency are not counted as part of the break.
- If a TAA participant attends classes only two or three days in a week, the break is counted in the same manner outlined above. The counting of break days is dependent on the schedule of the training facility, and not the schedule of the participant in training.
- However, a TAA participant can be paid for any week that at least one day of training is scheduled and attended.

**EXTENDED BENEFITS WORK TEST**

(20 CFR 617.11)

Participants, who have not exhausted Basic TRA benefits and have completed training, must meet the requirements of the Extended Benefits Work Test, as follows:

- Be able to work;
- Be available for work;
- Register for work and be available for referral or accept referral to suitable work by the TAA counselor;
- Apply for any suitable work the TAA participant is referred to by the TAA counselor;
- Accept any offer of suitable work; and
- Actively engage in seeking work and furnish the TRA unit with tangible evidence of four such efforts each week.

**OVERPAYMENTS**

(20 CFR 617.55)

If the State agency or a court determines an individual has received any TAA benefits, including TRA that they are not entitled, that individual is liable to repay those benefits to the State agency.

TRA overpayments may be recovered by deduction from any sums payable under TRA, Federal unemployment compensation, or other Federal benefits paid with respect to unemployment under a program administered by the State agency, and, if appropriate, State UI.

Recovery of overpayments of TRA may be waived if it;

- Is determined the payment was made without fault on the worker.
- It would cause a financial hardship for the individual or the individual's household, when taking into consideration the income and resources reasonably available to the individual or household and other ordinary living expenses of the individual
- Is made in accordance with the Federal guidelines established in the TAA regulations.

**ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE (ATAA)**

(Public Law 107-210 section 124) (TEGL 2-03) (TEGL 11-02)

Alternative Trade Adjustment Assistance (ATAA) is a wage subsidy demonstration project for workers 50 years of age or older. Some workers in firms with a significant number of workers over age 50, without easily transferable skills, who find reemployment may choose, in lieu of other Trade Adjustment Assistance benefits (TAA), to receive 50% of the difference between their new salary and old salary for two years, up to a maximum of \$10,000.

Petitioners shall have the opportunity to request certification under the ATAA program based on the three following criteria:

1. A significant number of workers in the affected workforce are 50 years of age or older.
2. The workers possess skills that are not easily transferable.
3. The competitive conditions within the workers' industry are adverse.

Individual workers must also satisfy the following:

- Be covered under a TAA certification.
- Obtain reemployment within 26 weeks after trade affected layoff.
- Be at least 50 years of age.
- Reemployment wages must not exceed \$50,000 annually.
- Cannot return to the same job duties with trade affected employer. Also cannot return to the same division/facility from which separated.
- Reemployment must be full-time (can be multiple employers; must apply separately for each employer).
- Overtime/bonus earnings are not considered when computing ATAA wage subsidy.
- Self-employment or work involving wages plus commission or piecework can be considered full-time if it meets the definition of full-time employment under applicable state law.
- Can reapply for ATAA if subsequent employment is obtained within two years from the date of original reemployment.

Eligible workers who choose ATAA may not receive training, Trade Readjustment Allowances (TRA), job search allowances or relocation allowances.

If a participant is receiving ATAA, he or she is also eligible to apply for HCTC.

**SUPERSEDES**

This policy supersedes all previous TRA Policies

**REFERENCES**

- The Trade Act of 1974, as amended
- The Trade Act of 2002 (P. L. 107-210); 20 C.F.R. Part 617
- TEGL No. 11-02, issued October 10, 2002, and entitled “Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002”
- TEGL 24-03, issued April 14, 2003, and entitled “Implementation of the Advance Health Coverage Tax Credit (HCTC) for Eligible Trade Adjustment Assistance/Trade Readjustment Allowances (TAA/TRA) Recipients”
- TEGL 11-02, Change 1, issued November 6, 2003, and entitled “Change 1 to the Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002”
- TEGL 11-02, Change 3, issued May 26, 2006