

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
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	DATE November 6, 2003

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-02, Change 1

TO : ALL STATE WORKFORCE AGENCIES
 ALL STATE WORKFORCE LIAISONS
 ALL ONE-STOP CENTER SYSTEM LEADS
 /s/
 FROM : EMILY STOVER DeROCCO
 Assistant Secretary

SUBJECT : Change 1 to the Operating Instructions for Implementing the
 Amendments to the Trade Act of 1974 Enacted by the Trade
 Act of 2002

1. Purpose. To provide guidance to State Workforce Agencies (SWAs) on training deadlines, issuing waivers to the Trade Adjustment Assistance (TAA) program training requirements, and additional information on implementing the TAA Reform Act of 2002.

2. References. The Trade Act of 1974, as amended (Pub. L. 93-618, as amended) ("the Trade Act"); the Trade Act of 2002 (Pub. L. 107-210) ("the 2002 amendments"); 20 CFR Part 617; Training and Employment Guidance Letter (TEGL) No. 11-02 (October 10, 2002); TEGL No. 20-02 (March 3, 2003); General Administration Letter (GAL) No. 7-94 (December 28, 1993); Unemployment Insurance Program Letter (UIPL) No. 24-03 and No. 33-03. The 2002 amendments to the TAA program are also known as the Trade Adjustment Assistance Reform Act of 2002.

3. Clarification of Training Deadlines for Eligibility for Trade Readjustment Allowances (TRA). The training deadlines requiring clarification include the following:

- "8/16 week deadline" for enrolling in training.
- 45-day extension of the 8/16 week deadline for extenuating circumstances.
- 210-day time limit for applying for training.

Section 114 of the 2002 amendments, which amended section 231(a)(5)(A) of the Trade Act, imposed a deadline by which a worker must be enrolled in

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approved training, or have a waiver of this requirement, in order to be eligible for TRA.

This deadline is either the last day of the 8th week after the week of issuance of the certification of eligibility covering the worker or the last day of the 16th week after the worker's most recent total qualifying separation, whichever is later (commonly referred to as the 8/16 week deadline). The "8/16 week deadline" applies to eligibility for all TRA, both basic and additional TRA. If a worker fails to meet the applicable 8/16 week deadline, then the worker is not eligible for any TRA (basic TRA or additional TRA, including TRA for remedial training) under the relevant certification. In many cases, the 8/16 week deadline for a worker will be reached while the worker is still receiving unemployment insurance (UI). Some workers are not aware that this deadline may apply before they exhaust their UI. The SWA is responsible for informing workers of these requirements. The SWA must also assist such workers in enrolling in an approved training program prior to the 8/16 week deadline, or issue the workers waivers prior to the 8/16 week deadline, if appropriate.

Under certain extenuating circumstances, the 8/16 week deadline for enrollment may be extended for up to 45 days. TEGL No. 11-02 explained the definition of "extenuating circumstances." That definition applies and includes situations that could arise, such as when a worker has been enrolled in a training program that is abruptly cancelled, where a worker suffers injury or illness that adversely affects the worker's ability to enroll in a training program, or other events where the states can justify and document that the application of extenuating circumstances is warranted.

The 2002 amendments did not change the 210-day time limit applicable to additional TRA. Additional TRA, beyond basic TRA, may be paid to workers participating in approved training who meet all TRA eligibility requirements, including the 210-day deadline. This means, in order to be eligible for additional TRA, a worker must have filed a *bona fide* application for training with the SWA within 210 days of either the issuance of the certification covering the worker or the worker's most recent separation, whichever is later. This 210-day deadline applies to additional TRA, but not to remedial TRA that may be received by workers enrolled in remedial training.

SWAs should be mindful that the 210-day deadline may pass if a worker has a long-term waiver of the training requirement. This could happen if a worker (who lacks marketable skills) receives a waiver due to lack of training funds. For example, if a worker receives a waiver 16 weeks after the worker's most recent qualifying separation and that waiver remains in effect for the maximum 26 weeks, then a total of 42 weeks (294 days) might pass without

the worker being required to be enrolled in approved training. If the worker does not file a *bona fide* application for training with the SWA during this 210-day period, then the worker is ineligible for additional TRA. Therefore, SWA's are responsible for ensuring that workers are informed of this deadline.

Issuance of a waiver before the 8/16 week deadline might occur while the worker is still receiving UI. In these instances, workers must meet the Extended Benefit work test requirement (except as provided in 20 CFR 617.11 (a)(2)(vi)(B)) as a condition of TRA.

4. HCTC and Waivers. All workers covered by TAA or NAFTA-TAA certified petitions who are receiving TRA, or would be receiving TRA except they have not exhausted their UI, may be eligible for the Health Coverage Tax Credit (HCTC) under the 2002 amendments. States are responsible for identifying and transmitting the names of those individuals to the Internal Revenue Service's HCTC Program Office in accordance with instructions contained in UIPL No. 24-03. The HCTC Program Office is ultimately responsible for determining whether HCTC-eligible TAA recipients meet all other qualifying criteria for receipt of the HCTC.

If a worker is still on UI and seeking the HCTC, actions must be taken to ensure that all criteria for TRA eligibility are met as described in TEGL No. 11-02, including that the worker is enrolled in an approved training program, has completed an approved training program, or has received a written waiver of the training requirement.

A preliminary assessment of each trade affected worker's skills must be carried out to identify workers for whom immediate enrollment in training is appropriate. Except where such an assessment of a worker clearly indicates a need to enroll in training immediately, the Department of Labor believes it would generally be appropriate to approve a waiver request under the marketable skills condition if such a determination is made shortly after separation and the worker qualifies for such a waiver. This waiver would allow some period of job search and avoid removing some workers prematurely from the labor force and investing training resources that may not be necessary to helping a worker obtain reemployment. All waivers must be reevaluated every 30 days for the duration of the waiver period. If the waiver is issued on the basis of marketable skills, the reevaluation will take into account the reasons the individual has been unable to obtain employment during the job search. If the difficulty finding work is attributed to skill deficiencies, it may be appropriate to revoke the waiver and immediately enroll the worker in training.

It should be emphasized that waivers are not permitted under the NAFTA-TAA program. Therefore, workers covered by a NAFTA-TAA certification may only qualify for HCTC if the worker is receiving TRA or if the worker is enrolled in an approved training program, or has completed an approved training program, while still receiving UI and while satisfying the other TRA eligibility criteria found at 20 CFR 617.11.

5. Extension of Waivers Beyond Six Months. The discussion in sections 3 and 4 above cover cases that may require a determination on whether to issue a waiver of the training requirement before a worker's UI entitlement has expired. The TAA Reform Act of 2002 specifically limits the maximum duration of a waiver to six months, unless the Secretary determines otherwise (section 231(c)(2)(A) of the Trade Act). In the absence of such a determination by the Secretary, a waiver issued during a worker's UI period often will not cover the worker's entire entitlement to basic TRA. For example, a six-month waiver could expire before all UI is exhausted and basic TRA begins for a worker who receives a waiver in order to establish HCTC eligibility. This can occur when a worker is granted a six-month waiver eight weeks after separation from employment. Such a waiver could expire one month before maximum entitlement to UI compensation (for example, 26 weeks of UI and 13 weeks of Temporary Extended Unemployment Compensation (TEUC) and basic TRA (13 weeks) are exhausted).

The Department interprets the wording of section 231(c)(2)(A) to cover cases in which it may be necessary to issue a waiver to a worker before the worker actually begins to receive basic TRA. Therefore, the Department has determined that a state may extend a worker's waiver beyond six months in any case where it is necessary to cover the worker's full entitlement to basic TRA.

6. Action Required. States shall inform all appropriate staff of the contents of these instructions.

7. Inquiries. States should direct all inquiries to the appropriate ETA Regional Office.