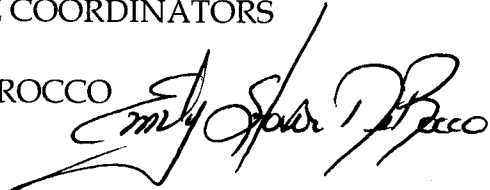


EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL ONR
	DATE May 25, 2006

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-02, Change 3

**TO:** ALL STATE WORKFORCE AGENCIES  
 ALL STATE WORKFORCE LIAISONS  
 ALL ONE-STOP CENTER SYSTEM LEADS  
 ALL STATE TRADE COORDINATORS

**FROM:** EMILY STOVER DeROCCO  
 Assistant Secretary



**SUBJECT:** Change 3 to the Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002- Revised Eligibility Requirements for Trade Readjustment Assistance (TRA) and Health Coverage Tax Credit (HCTC)

1. **Purpose.** To inform the state workforce agencies (SWAs) of a revised interpretation of the deadline for enrollment in approved training as a condition of Trade Readjustment Allowances (TRA) eligibility for Trade Adjustment Assistance (TAA) participants and its effect on Health Coverage Tax Credit (HCTC) eligibility.
2. **References.** Trade Act of 1974 (P.L. 93-619), as amended; Trade Act of 2002 (P.L. 107-210); 20 CFR part 617; Training and Employment Guidance Letter (TEGL) No. 11-02, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002"; TEGL No. 11-02, Change 1, "Change 1 to the Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002"; TEGL No. 11-02, Change 2, "Change 2 to the Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002"; Unemployment Insurance Program Letter No. 33-03, "Questions and Answers About Implementation of the Advance Health Coverage Tax Credit."
3. **Background.** The TAA program provides benefits and services to individuals to help facilitate a return to sustainable employment. To help them find new employment, certified workers may receive training in a new occupation. Extended income support, known as TRA, is available to help support workers while participating in training.

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The TAA Reform Act of 2002 (2002 amendments) established the HCTC, which provides a tax credit of 65% of the cost of an individual's qualified monthly health insurance premium and is available to individuals falling under three statutorily-prescribed categories: "eligible TAA recipients," "eligible Alternative Trade Adjustment Assistance (ATAA) recipients," and "eligible Pension Benefit Guaranty Corporation recipients."

The changes to the TRA eligibility requirements made in this TEGL affect the definition of an "eligible TAA recipient." An eligible TAA recipient is defined in the 2002 amendments as follows:

The term "eligible TAA recipient" means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section.

Subsection (a)(3)(B) refers to the requirement that the individual has exhausted his/her unemployment insurance (UI). The 2002 amendments changed the TRA eligibility requirements in the Trade Act of 1974, as amended, by establishing deadlines by which a worker must enroll in approved training or receive a written waiver of the training requirement in order to be eligible to receive TRA.

In its guidance related to implementing the 2002 amendments and the HCTC, the Department interpreted the statutory TRA requirements to mean that in order for an individual to be eligible for TRA, and thus potentially eligible for HCTC, he/she must be enrolled in training or have received a training waiver. This was true even for weeks that occurred prior to the applicable deadlines for training enrollment. At the time, the Department believed that its interpretation would enhance the adjustment process and encourage earlier intervention by providing more incentive for early enrollment in training.

4. **Discussion.** A GAO report (*Trade Adjustment Assistance: Reforms Have Accelerated Training Enrollment, but Implementation Challenges Remain*, GAO-04-1012, September 22, 2004) on implementation of the 2002 amendments noted that one barrier to participation in the HCTC program is that workers cannot afford to pay their entire insurance premiums while they wait to enroll in HCTC. The GAO also noted that the reason states are issuing so many training waivers is for workers to quickly become eligible for HCTC, minimizing the time during which they have to pay their entire health insurance premium. In addition, the GAO found that since states are spending a large amount of time issuing and reviewing waivers granted to establish HCTC eligibility, they have fewer resources to devote to performing meaningful assessments of individuals who want to go into training.

The GAO believes that the result is workers not necessarily enrolling in training that is best suited to their employment needs. Thus, the effect of the Department's earlier interpretation may have been to create a large administrative burden for state agencies without improving the program's effectiveness at quickly returning individuals to work.

After considerable review of the statute, the Department is revising its interpretation of the statutory TRA eligibility requirements related to training enrollment under the TAA program. The Department believes that the statutory requirement that a worker be enrolled in training by a certain date inherently means that they are not required to be enrolled in training before that date. Accordingly, the Department's revised interpretation is that a worker is not required to be enrolled in approved training in order to be eligible for TRA for weeks that occur before the applicable training enrollment deadline. Therefore, prior to the applicable training enrollment deadline, a worker may receive TRA, and thus potentially be HCTC-eligible, without being enrolled in training, participating in training, having completed training, or having received a training waiver. Similarly, while receiving UI for weeks before the applicable training enrollment deadline, a worker may be an eligible TAA recipient and potentially eligible for the HCTC without being enrolled in training, participating in training, having completed training, or having received a training waiver. The rest of this TEGL expands on the Department's interpretation of the training requirement as a condition of TRA eligibility.

5. **Revised TRA Eligibility Requirements.** In determining a worker's TRA eligibility, the requirement that workers be either enrolled in approved training or covered by a training waiver in order to receive TRA does not apply for weeks that occur prior to the training enrollment deadline as described below.

Eligibility for TRA requires that the worker enroll in approved training or receive a waiver of the training requirement by the later of 8 weeks after the certification is issued or 16 weeks after the worker's total or partial separation from adversely affected employment. This is known as the "8/16-week deadline." In addition, the law allows for a 45-day extension of this deadline if there are extenuating circumstances. The 8/16-week deadline, or an extension in appropriate circumstances, must be met whether or not the worker has exhausted his/her UI at the time the deadline is reached. However, before the deadline is reached, the worker need not be enrolled in training or have a waiver in order to be TRA-eligible.

6. **Effects on TRA Eligibility.** The revised TRA eligibility requirements detailed above mean that for weeks of unemployment before reaching the training enrollment deadline, a worker who has exhausted his/her UI may receive TRA if all requirements provided in Section 231(a) of the Trade Act, as amended, are met with the exception of the training enrollment requirement. Once the training enrollment

deadline is reached, the training requirement must be met by enrolling in training or receiving a waiver. If the deadline is not met, TRA payments will cease beginning the applicable week for which training enrollment or a waiver was required but the requirement was not met.

Note that for participants who receive a waiver of the training requirement, there is an additional requirement, explained in TEGL No. 11-02, that they be enrolled in training by the first Monday of the week following the week in which the waiver is terminated, whether by revocation or expiration, in order to maintain TRA eligibility, and thus, potential HCTC eligibility. (For a detailed discussion of HCTC Eligible TAA Recipient Criteria, please see attachment).

7. **Effects on HCTC Eligibility.** HCTC eligibility is tied directly to TRA eligibility. Except as explained below, a worker who hasn't exhausted UI is not TRA eligible, but may still be HCTC eligible. In addition, a worker not exhausting UI need not meet the EB work test for HCTC eligibility, even though the EB work test is required for TRA. Because this TEGL amends the Department's interpretation of the training enrollment deadlines for TRA eligibility it, therefore, changes the point at which an individual becomes an eligible TAA recipient for HCTC eligibility purposes.

As stated above, for weeks of unemployment before the deadline for training enrollment a worker may, if the worker meets other requirements set forth in the attachment, be TRA-eligible, making him/her an eligible TAA recipient and potentially eligible for the HCTC, without being enrolled in training, having completed training, or having received a waiver from the training requirement. In addition, a worker who is receiving UI for weeks of unemployment before the training enrollment deadline may be an eligible TAA recipient if all TRA requirements provided in Section 231(a) of the Trade Act, as amended, are met with the exception of 231(a)(3)(B), the requirement that the individual has exhausted UI. Under the interpretation provided in this TEGL, a worker is considered to have met the requirement of being enrolled in training, having completed training, or having received a waiver from training during the period before the training enrollment deadline.

However, once the training enrollment deadline is reached, the worker must meet the requirement for enrolling in training or receiving a waiver. If this deadline is not met, TRA eligibility will end and the worker will cease to be an eligible TAA recipient for HCTC purposes at the end of the month.

The effect of this change on HCTC eligibility should be to provide workers with quicker access to the HCTC and to ease an unnecessary administrative burden on states by eliminating the practice of issuing immediate training waivers to workers solely or primarily for the purpose of HCTC eligibility.

8. **Effects on State Administration.** In TEGL 11-02, Change 1, the Department provided states with significant flexibility in issuing training waivers in order to enable workers to establish immediate eligibility for HCTC. As discussed in Section 3, the Department has found that the result of this policy has been that states are issuing a large number of training waivers under the “marketable skills” waiver category with minimal, if any, assessment completed before issuing the waiver. This has created a large administrative burden for states in issuing and reviewing these waivers. Moreover, once issued, these waivers also have the effect of extending the training enrollment deadline, weakening the effectiveness of the deadline in requiring the worker to make a timely training decision.

Although the Department is committed to ensuring workers have access to all TAA benefits and services, including the HCTC, the Department does not believe that issuing immediate training waivers has proven to be the most effective method of doing so. Therefore, the Department’s intent with this TEGL is that states will no longer issue immediate waivers in order to establish HCTC eligibility. States should use the time between certification or layoff and the training enrollment deadline to conduct assessments and develop meaningful service plans that lead to reemployment.

States may continue to issue training waivers under the marketable skills category in order to meet the training enrollment deadline in cases where an initial assessment does not indicate an immediate need for training and the state believes it would be appropriate for the worker to test the job market in order to make a final determination on whether or not suitable employment is available for the worker. All waivers must be reevaluated every 30 days for the duration of the waiver period. In any case where a marketable skills waiver is issued, the 30-day review of the waiver should include an evaluation of whether the worker’s lack of success in obtaining employment indicates that the worker does not have sufficient marketable skills and should be referred to training.

9. **Action Required.** State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of Federal law that are contained in this advisory.
10. **Inquiries.** States should direct all inquiries to the appropriate regional office.
11. **Attachment.**

HCTC Eligible TAA Recipient Criteria