

U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI/TRA
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DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 1-98

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : WENDY L. MCCONNELL
 Acting Administrator
 for Regional Management

SUBJECT : Revised Policy on Reducing Trade Readjustment Allowances (TRA) by Federal Student Financial Assistance

1. **Purpose.** To provide revised program guidance to State Employment Security Agencies (SESAs) on the payment of TRA and subsistence and transportation allowances when a worker also receives Federal student financial assistance.

2. **References.** The Trade Act of 1974, as amended (the Trade Act); 20 CFR Part 617; the Higher Education Act (HEA) of 1965, as amended by the Higher Education Amendments of 1992; and General Administration Letter (GAL) No. 1-88.

3. **Background.** GAL No. 1-88, issued December 2, 1987, provided program guidance to SESAs on the payment of TRA when a worker receives financial assistance such as a Pell Grant, a Supplemental Educational Opportunity Grant, or a similar grant or training allowance under any Federal law other than the Trade Act. Because of the subsequent Higher Education Amendments of 1992, the revised program guidance in this new GAL supersedes the program guidance in GAL No. 1-88 by providing that Pell Grants and other Federal student financial assistance shall not be deducted from payment of TRA and subsistence and transportation allowances.

RESCISSIONS None	EXPIRATION DATE September 30, 1998
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Other Federal student financial assistance includes benefits under Supplemental Educational Opportunity Grants, Federal educational loan programs, Presidential Access Scholarships, Federal student work-study programs, and Bureau of Indian Affairs Student Assistance.

This revised policy on reducing TRA by Pell Grants and other Federal student financial assistance results from a conflict between the provisions of the Trade Act and implementing regulations, which require that payment of TRA be reduced by

the amount of a training allowance received pursuant to a Pell Grant or other Federal student financial assistance, and Section 479B of the HEA, as amended by Section 471 of the Higher Education Amendments of 1992, which prohibits the reduction of any Federally financed benefit or assistance based upon the receipt of such student financial assistance.

Section 479B of the HEA, as amended, also prohibits the reduction of the amount of training payments due to the receipt of Federal student financial assistance. Conflict between this provision and the nonduplication provision of Section 236(a)(4) of the Trade Act may be avoided through funding prearrangements under Section 617.25(b) of the regulations. The Department is preparing additional guidance on this matter.

When a State awards Trade Act benefits to a person receiving Federal student financial assistance, the State will notify the appropriate State educational officials consistent with State laws including the Privacy Act requirements.

Section 471 of the Higher Education Amendments took effect on July 1, 1993. The justification for the revised policy on reducing TRA by Pell Grants and other Federal student financial assistance is provided in the Attachment to this GAL.

4. Revised Program Guidance on the Payment of TRA.

This GAL revises the program guidance provided to SESAs in GAL No. 1-88 on the payment of TRA when a worker who qualifies for TAA also receives a Pell Grant or other Federal student financial assistance from the U.S. Department of Education.

GAL No. 1-88, which was issued prior to the Higher Education Amendments of 1992, provided the U.S. Department of Labor's position at that time on Section

236(a)(3)(C) (presently Section 236(a)(4)(C)) of the Trade Act, as implemented by Section 617.13(c)(2) and Section 617.25(b)(4)(ii)(C)(1) of the regulations, as follows:

When Pell Grant funds are disbursed to the worker by the training institution, and the worker is responsible for paying the costs of training and other related costs, under Section 236(a)(3)(C) of the Act the funds are not for the purpose of the "direct payment of the costs" of training. The Pell Grant funds disbursed to the worker may be used to pay the costs of training or retained for personal maintenance costs. Such funds are categorized as a training allowance under Section 232(c) of the Act (Section 617.13(c)(2)) and are deductible from the weekly TRA payments on a pro rata basis over the term of the training. (Underlining added.)

The purpose for citing the above paragraph in GAL No. 1-88 is to emphasize that the regulations previously considered a payment of a Pell Grant to the worker to be an "indirect" payment of training costs and therefore was deductible from TRA. However, because of the amendment to the HEA made by Section 471, no payment of TRA made to a worker for any week beginning after the date of this GAL shall be reduced due to receipt of a Pell Grant or other Federal student financial assistance.

Sections 617.27(a) and 617.28(a) of the regulations contain similar provisions reducing the payment of subsistence and transportation allowances if the worker receives similar assistance under another Federal law. Under the amendment to the HEA made by Section 471, such payments made after the date of this GAL may not be reduced on account of receipt of Federal student financial assistance.

A worker whose payment of TRA, subsistence allowance, or transportation allowance was reduced due to the receipt

of a Pell Grant or other Federal student financial assistance for any week beginning on or after July 1, 1993, may be entitled to reimbursement for the reduced amount, pursuant to the applicable provisions of State UI law for undertaking redeterminations as stated below.

Redeterminations of prior determinations of TRA and subsistence and transportation allowance claims shall be undertaken by a State or State agency solely pursuant to the authority in Section 617.50(c) of the regulations and the applicable State UI law as it is applied in the case of regular State UI. Such provisions of the State UI law shall be the sole criterion in determining whether the State or the State agency has the authority to make a redetermination in any case.

For this purpose, the State UI law includes judicial decisions of the courts of the State in comparable UI cases as well as State statutory provisions, and thus is the same as the "State law" which is relevant for conformity and compliance purposes under Title III of the Social Security Act. In other words, the authority a State agency has under the State law to make redeterminations of a State UI claim under similar circumstances, and the time limits on such authority, is the authority a State agency has to make redeterminations of TRA and subsistence and transportation allowance claims due to the revised policy in this GAL. No departure from these rules shall be undertaken in any circumstances without the prior approval of the U.S. Department of Labor.

In the case of any determination made with respect to any worker whose payment of TRA or subsistence or transportation allowance was incorrectly reduced due to the receipt of a Pell Grant or other Federal student financial assistance for any week beginning on or after July 1, 1993, the State or State agency shall exercise such authority as it has under the applicable State UI law for regular State UI to undertake a redetermination of the Trade Act payment.

The procedural requisites of the applicable State law and Section 617.50(c) of the regulations shall be observed in

undertaking and making any redetermination, including any notice to the claimant that reconsideration is being undertaken and the issue involved, and affording the worker an opportunity to present evidence and be represented before the claims examiner.

If, upon redetermination, it is decided that the worker was underpaid TRA or subsistence or transportation allowance for any week beginning on or after July 1, 1993, due to the receipt of a Pell Grant or other Federal student financial assistance, the worker will be reimbursed for the underpaid amount. However, before reimbursement of TRA is made to any worker, the SESA must make certain that the amount of reimbursement will not exceed the maximum amount of basic TRA payable to the worker as determined in Section 617.14(a) or the number of weeks of additional TRA payable as determined in Section 617.15(b).

(As explained in ET Handbook No. 336, SESA UI Program and Budget Plan Handbook, SESAs should report redeterminations on line 5, Section C of the UI-3 report. The MPU value is the same as the allocated initial claims MPU.)

The revised program guidance on the payment of TRA in this GAL provides unequivocally that Section 232(c) of the Trade Act and the TRA reduction requirements of Sections 617.13(c)(2) and 617.25(b)(4)(ii)(C)(1) of the regulations are not applicable to Pell Grants and other Federal student financial assistance. This is also true for Section 617.27(a) and Section 617.28(a) of the regulations relative to the payment of subsistence and transportation allowances.

NOTE: Funds provided to adversely affected workers from the other above-named Federal student financial assistance programs under the HEA will be administered in the same manner as Pell Grants.

5. Educational and Training Grants Other Than HEA Grants. Educational and training grant funds other than HEA grant funds and Bureau of Indian Affairs Student Assistance will

continue to be administered in the same manner as other non-HEA grant funds as required by the Trade Act.

6. Action Required. SESA Administrators are requested to:

a. Inform appropriate staff of the revised program guidance on the payment of TRA (or payment of subsistence or transportation allowances) when workers also receive a Pell Grant or other Federal student financial assistance.

b. Ensure that the applicable provisions of State UI law for undertaking redeterminations are used to reimburse workers whose TRA payment (or subsistence or transportation allowance payment) was reduced due to the receipt of a Pell Grant or other Federal student financial assistance.

7. Inquiries. Inquiries should be directed to the appropriate Regional Office.

8. Attachment. Justification for Revised Policy on Reducing Trade Readjustment Allowances (TRA) By Federal Student Financial Assistance

**JUSTIFICATION FOR REVISED POLICY ON REDUCING
TRADE READJUSTMENT ALLOWANCES (TRA)
BY FEDERAL STUDENT FINANCIAL ASSISTANCE**

A conflict exists between the provisions of the Trade Act and the implementing regulations, which require that the payment of TRA be reduced by the amount of a training allowance received pursuant to a Pell Grant or other Federal student financial assistance, and Section 479B of the Higher Education Act (HEA), as amended by Section 471 of the Higher Education Amendments of 1992 (codified at 20 U.S.C. 1087uu), which prohibits the reduction of any Federally financed benefit or assistance based upon the receipt of such student financial assistance.

Conflicting Provisions of the HEA and Trade Act. Section 479B of the HEA, as amended by Section 471 of the Higher Education Amendments of 1992, provides:

Notwithstanding any other provision of law, student financial assistance received under this title . . . shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State or local program financed in whole or in part with Federal funds.

Section 232(c) of the Trade Act provides:

If a training allowance under any Federal law other than this Act is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled . . . to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him

Resolution of Conflicting Provisions. The conflict between Section 479B of the HEA and Section 232(c) of the Trade Act and the implementing regulations will be resolved as provided below.

Section 232(c) provides that a worker's TRA payment for any week shall be reduced by the amount of a training allowance received under any Federal law. Section 617.13(c)(2) of the regulations, which implements this provision, includes Pell Grants and Supplemental Educational Opportunity Grants as among the types of assistance subject to this reduction.

Furthermore, Section 617.25(b)(4)(ii)(C)(1) of the regulations, which prohibits the consideration of indirect payment of training costs to a worker in determining the amount of Trade Act training payments, provides that such indirect payments of training costs are to be deducted from the TRA payable to the worker under Section 617.13(c)(2).

However, Section 479B of the HEA prohibits taking Federal student financial assistance into account when determining eligibility for or the amount of other Federal benefits. This prohibition cannot be reconciled with Section 232(c) of the Trade Act, as implemented by Section 617.13(c)(2) and Section 617.25(b)(4)(ii)(C)(1) of the regulations. Hence, Section 232(c) of the Trade Act and the TRA reduction requirements of Section 617.13(c)(2) and Section 617.25(b)(4)(ii)(C)(1) of the regulations are not applicable to Pell Grants and other Federal student financial assistance.

When two conflicting laws addressing the same subject matter cannot be reconciled, the latter law implicitly amends the earlier enacted law. In the instant situation, the latter of the two laws is the Higher Education Amendments of 1992, which must govern.