

PA Department of Labor & Industry
Workforce Investment Center
Bureau of Workforce Investment
WORKFORCE INVESTMENT INFORMATION NOTICE – 6-03
November 4, 2003

TO : ALL TEAM PA CAREERLINK SITE ADMINISTRATORS
ALL BUREAU OF EMPLOYER AND CAREER SERVICES (BECS)
REGIONAL DIRECTORS
ALL BECS MANAGERS
ALL WORKFORCE INVESTMENT ACT, TITLE 1 OPERATORS
DIRECTOR, BUREAU OF UNEMPLOYMENT COMPENSATION
BENEFITS AND ALLOWANCES
CHIEF, INTERSTATE & FEDERAL PROGRAMS
HEAD, FEDERAL PROGRAMS UNIT

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Bureau of Workforce Investment

SUBJECT : Waivers: Trade Act of 1974 vs. Trade Adjustment Assistance
Reform Act of 2002 (TAA Reform Act)

INQUIRIES : If you have questions concerning this issuance, please direct
them to one of the following Bureau of Workforce Investment,
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- 1. Purpose.** This Workforce Investment Information Notice is being issued to provide the information and guidance in regard to the Trade Act of 1974 and the TAA Reform Act waiver policy and procedure.
- 2. Reference.** Trade Act of 1974 (Pub. L. 93-618), as amended; 19 USC 2271–2331; 20 CFR Part 617 et. seq.; Training and Employment Guidance Letter (TEGL) No. 11-02 dated October 10, 2002; TEGL No. 20-02 dated March 3, 2003; 20 CFR Parts 661 and 662; Section 115 of the 2002 Act (Pub. L. 107-210) amends Section 231(c) of the 1974 Act; November 14 and 15, 2002, Trade Act of 2002 Training, Holiday Inn—East, Harrisburg, PA.

3. **Discussion.** The 1974 Act has been amended several times since its initial passage. The TAA Reform Act was signed into law on August 6, 2002, (H.R. 3009, the TAA Reform Act, P.L. 107-210). The TAA Reform Act made several amendments to the 1974 Act, including requirements governing waivers. The provisions of the Trade Act of 1974, amended on September 30, 2001, govern waivers issued under petitions filed on or before November 3, 2002. Waivers issued under petitions filed on or after November 4, 2002, must meet the requirements set forth in the TAA Reform Act, as well as TEGL No.11-02. This WIIN also provides guidance regarding the issuance of multiple waivers to individuals who qualify under the Trade Act of 2002.
4. **Action Required.** This issuance establishes the State's implementation of the waiver policies under the Trade Act of 1974 and the TAA Reform Act.
5. **Attachments.** The Trade Act of 1974 and the Trade Adjustment Assistance Reform Act of 2002 (TAA Reform Act) Waiver documents.
6. **Expiration Date.** Ongoing.

WAIVERS: TRADE ACT OF 1974 VS. TRADE ADJUSTMENT ASSISTANCE REFORM ACT OF 2002

Both the Trade Act of 1974 and the TAA Reform Act offer weekly cash payment called Trade Readjustment Allowances (TRA). In most instances, when workers are laid off they receive unemployment compensation, and if the workers are adversely affected workers covered under a certified petition, they may be eligible to receive weekly TRA payments after their initial and extended unemployment compensation benefits expire. The Trade Act of 1974 and the TAA Reform Act identify different conditions under which TRA payments are made.

Trade Act of 1974:

In order to receive Basic TRA, an affected worker must meet one of the following three stipulations:

- a) the worker must be currently participating in a training program approved through the Trade Adjustment Assistance (TAA) benefit of the Trade Act;
- b) the worker must have completed a training program that was approved through TAA; or
- c) the worker has been issued a waiver of the training participation requirement.

A waiver is issued to a worker when a determination is made that training is not feasible or is not appropriate. The waiver is issued for a period of not more than 30 days, and should be revoked at any time whenever the circumstances that permitted the issuance of the waiver have changed.

One or more of the following reasons must exist to determine that suitable training is “not feasible”:

- a) the beginning date of approved training is beyond thirty days, as required by the definition for “enrolled in training,” and no other suitable/approvable training was available to the worker for the time period covered by this waiver;
- b) training is not reasonably available to the individual;
- c) training is not available at a reasonable cost;
- d) funds are not available to pay the total costs of training; or
- e) personal circumstances such as health or financial resources preclude participation in training or satisfactory completion of training.

The reasons for determining that suitable training is “not appropriate” would be as follows:

- a) the worker is likely to be recalled within sixty days to the firm from which they separated;
- b) the duration of all suitable/approvable training during the time period covered by this waiver exceeds the worker’s maximum entitlement to TRA, and the worker is not otherwise able to support himself/herself while in training;
- c) the worker is likely to be hired within sixty days to suitable employment (80% of the previous average weekly wage in the adversely affected employment and utilizing similar skill levels).

Trade Adjustment Assistance Reform Act of 2002:

The TAA Reform Act (which affects all petitions filed on or after November 4, 2002) changed the requirements to receive Basic TRA to the three stipulations discussed below.

The worker must:

- (a) have completed or be enrolled in a training program approved under the Trade Act by the later of the last day of the 16th week from the date of their most recent qualifying separation, or the last day of the 8th week following the week in which the petition is certified, or 45 days past the appropriate deadline if a one-time extension is issued due to extenuating circumstance;
- (b) have completed a training program approved under the Trade Act since the date of the qualifying separation;
- (c) have received a written waiver of the training requirement.

Extenuating circumstances are situations that could arise when training programs are abruptly cancelled or where the first available enrollment date is past the end of the 60-day period, as well as in cases where a worker suffers injury or illness that adversely affects the worker’s ability to enroll in training.

The waiver of the training requirement is limited to the time period for which it has been determined that training is not feasible or appropriate as defined by the six criteria listed below. The maximum time period for any waiver is six months. The waiver will be revoked immediately when the criteria for the issuance of the waiver is no longer valid.

Upon the expiration of the waiver, the worker should be evaluated to determine if training is now appropriate or if another waiver should be issued. If multiple waivers

are issued, the waiver of the requirement to be enrolled in TAA training is only valid during the period of Basic TRA eligibility.

Enrollment in training will only be waived if one or more of the following conditions exists:

- 1) Recall – the worker has been notified that the firm from which the separation occurred will recall the worker (note: this criteria does not specify the time frame for the recall) – written notice of the recall must be attached to waiver;
- 2) Marketable skills – the worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker), and there is a reasonable expectation of suitable employment in the foreseeable future;
- 3) Retirement – the worker is within two (2) years of meeting all requirements for entitlement to either old-age insurance benefits under Title II of the Social Security Act, or a private pension sponsored by an employer or labor organization;
- 4) Health – the worker is unable to participate in training due to the health of the worker (issuance of the waiver under this criteria does not exempt a worker from requirements relating to being able and available, active search for work, or refusal to accept work under Federal or State unemployment compensation laws);
- 5) Enrollment Unavailable – the first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, ~~or~~, if later, there are extenuating circumstances for the delay in enrollment; or
- 6) Training not Available – training under the Trade Act is not reasonably available to the worker from either governmental agencies or private sources, no training that is suitable for the worker is available at reasonable cost, or no training funds are available.

Training and Employment Guidance Letter No. 11-02 titled, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002" defines "enrolled in training" as when the worker's application for training has been approved by the State Workforce Agency (in Pennsylvania the State Workforce Agency is the Department of Labor and Industry) and that the training institution has furnished written notice to the State Workforce Agency that the worker has been accepted into the approved program which is to begin within 30 days of such approval (20CFR 617.11(a)(2)(vii)(D)).

TEGL No. 2-02, issued by the USDOL shortly after the implementation of the TAA Reform Act, emphasized that waivers should be issued shortly after the layoff date rather than waiting until regular unemployment compensation has been exhausted. This new emphasis is in part due to the implementation of the Health Coverage Tax Credit (HCTC) program under the Trade Act of 2002.

One of the criteria of eligibility for the HCTC is that the individual must be “an eligible TAA recipient,” which is defined as an individual who is receiving TRA, or who would be eligible for TRA except that he/she has not yet exhausted employment benefits.” Under the Trade Act, one of the requirements (per Section 231(a)) for meeting “eligible TAA recipient” is that “the worker is enrolled in approved training and such enrollment occurred within the applicable time periods or has received a waiver of the enrollment in training requirement in accordance with the waiver conditions specified in the law.” The applicable time periods vary depending on whether the worker is covered by the Trade Act of 1974, TAA Reform Act, or NAFTA-TAA program. The NAFTA-TAA program does not allow waivers.

To determine if the worker, covered by the amended (2002) TAA program, should be issued a waiver from the enrollment in training requirement, it should be taken into account whether the worker has been recently separated from a trade-affected employer; has had a job search period; and has received reemployment services. The Marketable Skills waiver condition, allows the training requirement to be waived if the individual has “marketable skills for suitable employment, and there is a reasonable expectation of employment at equivalent wages.”

The USDOL has therefore determined that it would generally be appropriate to approve a waiver request under the marketable skills condition if such determination is made shortly after separation, except when the preliminary assessment indicates an immediate need for enrollment in training. Any such waivers approved shortly after separation are considered to be “temporary,” with an expiration date of the regular 8/16-week deadline. At the time that the temporary waiver expires, the waiver is reevaluated, taking into account that the worker has not become reemployed, and based upon the reevaluation, the worker is either required to enroll in training or is issued an additional waiver (TEGL No. 20-02, (6)(3)(i)).

While Alternate Trade Adjustment Assistance (ATAA) participants are eligible for HCTC, they are only eligible once they are participating in the ATAA program and receiving a benefit under the program. Thus, if workers considering ATAA have not become reemployed and are in need of HCTC, the Team PA CareerLink staff should assess whether a training waiver might be appropriate under one of the enumerated criteria. As with all training waivers, any waiver issued should be reviewed every 30 days to determine their continued eligibility. In cases where the waiver is no longer appropriate, it should be revoked.

USDOL believes these same procedures should be applied to workers covered by certification under the prior (1974) TAA program. One of the conditions for issuing a

waiver under the 1974 Act is that training is “Not Appropriate” which is described, as “the worker is likely to be hired within 60 days to suitable employment earning 80 percent of the previous average weekly wage in the adversely affected employment and utilizing similar skill levels” or can be interpreted to say “The individual possesses skills for ‘suitable employment’ and there is a reasonable expectation of employment in the foreseeable future (20 CFR 617.19(b)(2)(ii)(C)).” For those waivers issued to affected workers covered by petitions filed prior to November 4, 2002, the waivers must be issued for no more than thirty days, at which time the reason(s) for issuing the waiver should be reviewed and can be renewed (617.19(c)(1)).

Procedures:

Two distinct procedures will run concurrently. The deciding factor is when the petition was filed. For those affected workers covered by a petition filed prior to November 4, 2002, a waiver must meet those criteria and requirements as described above under "Trade Act of 1974." For those workers whose petitions were filed on or after November 4, 2002, a waiver must meet the criteria and requirements as described above under "Trade Adjustment Assistance Reform Act of 2002."

Two forms are used in the waiver process. Under 1974, there is the ES-1941, "Training Program Determination for TAA/TRA," and the ES-1940, "Trade Act Training Waiver Approval/Revocation." Under the TAA Reform Act, there is the ES-1941B, "Enrollment Status/Extension of Period for Training," and the ES-1940A, "Training Waiver Approval/Revocation Trade Act of 2002."

The form ES-1941 may be used as a means of program determination communication between TAA staff (Team PA CareerLink) and TRA staff (Unemployment Compensation Service Center (UCSC)) if, at the time an individual exhausts regular unemployment compensation benefits, the UCSC staff are not aware of the status of the applicant. The purpose of the ES-1941 is to identify for the UCSC which of the three (3) criteria for TAA program status had been met at the time regular unemployment compensation became exhausted and consideration for TRA was being determined. Notification of program status to the UCSC remains the responsibility of the Team PA CareerLink TAA staff and can be accomplished by fax and/or e-mail.

If it is determined that the worker is eligible for TAA and a waiver will be issued, the Team PA CareerLink staff, in conjunction with the worker, will complete the waiver. The worker and TAA Representative will sign it and two copies are to be made; the original for the Team PA CareerLink TAA folder, a copy for the worker, fax a copy to Trade Coordination Services at (717) 772-5478, and to the TRA unit at the UCSC.

On the Team PA CareerLink website under Add Services/Programs, the Team PA CareerLink staff will confirm that TAA program eligibility has been selected and, under the waiver section, select the correct reason for the issuance of the waiver. Staff are reminded that under no circumstances may a waiver be granted until TAA eligibility has been confirmed.