

# Mass Workforce Issuance

---

**Workforce Issuance No. 09-77**

**Policy**    **Information**

---

**To:** Chief Elected Officials  
Workforce Investment Board Chairs  
Workforce Investment Board Directors  
Title I Administrators  
Career Center Directors  
Title I Fiscal Officers  
DCS Regional Managers

**cc:** WIA State Partners

**From:** Michael Taylor, Director  
Department of Workforce Development

**Date:** November 16, 2009

**Subject:** **Waivers from Training under the Trade Adjustment Assistance Programs**

---

**Purpose:** To notify Local Workforce Investment Boards, One-Stop Career Center Operators and local workforce investment partners of changes resulting from enactment of The Trade and Globalization Adjustment Assistance Act of 2009 for approval of waiving the requirement that a TAA eligible person participate in training under the Trade Adjustment Assistance Program (TAA) in order to receive basic Trade Readjustment Assistance (TRA) benefits..

**Background:** On February 17, 2009 the American Recovery and Reinvestment Act (ARRA) of 2009 was signed into law. The Trade and Globalization Adjustment Assistance Act of 2009, part of the ARRA, amended several elements of the TAA program. One of the changes includes new deadline dates for TRA eligibility, thus a new set of dates in which a waiver from training must be approved. This policy provides notice of the revised deadlines for TRA eligibility and also provides procedural guidance with respect to applying for waivers from training.

The six specific criteria for approval of a waiver of the training requirement for eligibility for basic TRA are described in ATTACHMENT A.

**Policy:** A waiver from training may be granted to an adversely affected worker if it is determined that it is not feasible or appropriate for the worker to attend training.

**Petitions Filed on or after May 18, 2009  
(Identified by petitions numbered “70,000” and higher)**

In order for individuals to be determined to be TAA eligible for the Trade Adjustment Allowance under a petition filed *on or after* May 18, 2009, these individuals must be enrolled in training, participating in training, have completed training or *be approved to be “waived” from training* no later than **26 weeks** from the date of the petition certification or **26 weeks** from the worker’s most recent total separation from adversely affected employment.

All waivers must be initially reviewed after 90 days, and reviewed every 30 days thereafter. A summary of the individual’s job search information must be submitted with each request to extend a previously approved waiver.

Additionally, in some instances, a **45 day** “extenuating circumstance” extension may be approved. If the deadlines described above are missed, an extension under the **Good Cause Provision** can be requested (§1825 of the Trade and Globalization Adjustment Assistance Act) (see ATTACHMENT A).

**Petitions Filed before May 18, 2009  
(Identified by petition numbered “69,999” and lower)**

In order for eligible individuals covered under a petition filed *before* May 18, 2009 to be entitled to Trade Readjustment Allowances, these individuals must be enrolled in training, participating in training, have completed training or *be approved to be “waived” from training* no later than **8 weeks** from the date of the petition certification or **16 weeks** from the worker’s most recent total separation from adversely affected employment.

Additionally, in some instances, a **45 day** “extenuating circumstance” extension may be approved (see ATTACHMENT A).

For all individuals covered under petitions filed before May 18, 2009, all waivers must be reviewed at the end of the thirty day period. A summary of the individual’s job search information must be submitted **every 30 days** with a request to extend the waiver.

**Action**

**Required:** Please distribute this policy to all appropriate individuals in your organization, and take necessary action to ensure compliance with this policy.

**Effective:** May 18, 2009

**References:** Trade Adjustment Assistance Act of 1974, as amended  
Trade Reform Act of 2002  
The Trade and Globalization Adjustment Assistance Act of 2009  
Trade Regulations, 20 CFR Part 617

TEGL 11-02, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, issued October 10, 2002 and subsequent changes

TEGL 22-08, Operating Instructions For Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, issued on May 15, 2009

**Inquiries:** Please email all questions to [PolicyQA@detma.org](mailto:PolicyQA@detma.org). Also, indicate Issuance number and description.

## ATTACHMENT A

Following are the descriptions of the 6 specific criteria for approval of a waiver of the training requirement for basic TRA eligibility (only one criterion needs to be met to issue a waiver):

1. **Recall**—The worker has been notified that he/she will be recalled by the firm from which the separation occurred.

**Note:** This requires that the worker has received specific notice of recall to the worker's adversely-affected employment. It is required that the notice of recall be in writing from the firm. A copy of the recall notice must be retained in the case file.

2. **Marketable Skills**—The worker possesses marketable skills for suitable employment [as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act [42 U.S.C. 503(j)], carried out in accordance with guidelines issued by the Secretary] and there is reasonable expectation of employment at equivalent wages in the foreseeable future.
  - a. The term "Marketable Skills" may include the possession of a postgraduate degree from an institution of higher education [as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)], or an equivalent institution, or the possession of an equivalent postgraduate certification in a specialized field.
  - b. An assessment must be completed when applying for a Marketable Skills waiver from training and the results, including a description of the individual's marketable skills, recorded in MOSES.
  - c. A waiver from training due to Marketable skills should be used as a means of encouraging more rapid reemployment and the use of up-front job search.

For any eligible individual covered under a petition filed *before* May 18, 2009, a Marketable Skills waiver may be used if an applicant's main focus is to find re-employment in order to participate in the Alternative Trade Adjustment Assistance (ATAA) program. It is possible that an individual may need added or enhanced skills to obtain 'suitable' employment in the current labor market but he/she is not interested in training and would prefer to find any employment and apply for ATAA. Using the Marketable Skills waiver is appropriate for this purpose but the individual will need to participate in intensive reemployment services with a career counselor in order for the counselor to monitor eligibility deadlines and/or the exhaustion of regular unemployment compensation.

If the individual reaches the 26 week deadline to be eligible for ATAA and has been unsuccessful in finding employment, then an additional assessment will be needed to determine either that the individual possesses current marketable skills or is in need of occupational training in order to become reemployed.

For any eligible individual covered under a petition filed *on or after* May 18, 2009, the above requirement does not pertain as the 26 week deadline to obtain employment is no longer applicable under the Reemployment Trade Adjustment Assistance (RTAA) regulations.

3. **Retirement**—The worker is within 2 years of meeting all requirements for entitlement to either Social Security Benefits or a private pension sponsored by an employer or labor organization. There is no set age for retirement; this is determined on an individual basis. If this criterion forms the basis for the waiver request, the individual must document whether the retirement is to be undertaken in conjunction with Social Security or a Private Pension plan and the date when the individual becomes eligible to participate.
  - a. For eligibility under Social Security, the counselor must receive and maintain a copy of a statement from the Social Security Administration that indicates the individual meets the eligibility criteria.
  - b. For eligibility under a Private Pension Plan, the counselor receive and maintain a copy of a Pension letter indicating the individual’s age or date of eligibility to begin collecting pension payments.
4. **Health**—The worker is unable to participate in training due to the health of the worker, except that this waiver does not exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.
  - a. For this criterion to form the basis of a waiver approval, a physician’s statement clearly indicating that the individual is not able to attend training but is able to work is required.
5. **Enrollment Unavailable**—The first available enrollment date for the approved training is within 60 days after the date of the determination. Or, if later, there are extenuating circumstances for the delay in enrollment.
  - a. “Enrolled in training” means that the worker’s application for training has been approved by the Division of Career Services Trade Unit (DCS) and that the training institution has furnished written notice to DCS that the worker has been accepted into the approved program which is to begin within 30 days of such approval (20 CFR 617.11(a)(2)(vii)(D)). No training will be approved if it has not met the necessary requirements to be included on the Trade Approved Training List.
6. **Training Not Available**—Training approved by the Division of Career Services Trade Unit 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 a reasonable cost; or no training funds are available.

### **Extenuating Circumstances Extension**

“Extenuating circumstances” (EC) are situations that could arise when training programs are abruptly cancelled or where the first available enrollment date is beyond the end of the 60-day period, as well as in cases where an individual suffers injury or illness that adversely affects his/her ability to enroll in training. The intent of the statutory time limitations is to assure that displaced workers who are in need of training become enrolled in training as quickly as possible in order to expedite their adjustment and reemployment.

The start date for this type of “extenuating circumstances” extension must be either the 8/16 week deadline or the 26 week deadline, depending on the date of the petition under which the individual is covered.

## Good Cause Provision

Section 1825 of The Trade and Globalization Adjustment Act of 2009 allows the Commonwealth to invoke, relative to TRA benefit eligibility, the “Good Cause” provisions of the state’s unemployment insurance law [MGL 151a, §39(b)] regarding statutory time limitations affecting benefit eligibility. There are two types of Good Cause provisions: “Good Cause within 30 Days” and “Good Cause beyond 30 Days”.

If an individual has missed either of the 26-week deadlines, he/she should apply for an Extenuating Circumstances (EC) extension. If the individual has also missed the EC deadline, and it is within 30 days after the EC deadline, then he/she may request an extension under the “Good Cause Within 30 Days” provision.

There are 11 reasons an individual may be approved for a “Good Cause Within 30 Days” provision:

- Career Center or State staff directly discouraged the individual to file
- Death of household member or immediate family
- Delay in mail
- Determination / Notice never received
- Emergency family crisis
- Illiteracy or mental disability resulting in the inability to understand
- Intimidation, coercion, or harassment by employer
- Limited English
- Out of state seeking employment
- Serious illness or hospitalization
- Other

If a worker has missed the 26-week deadlines, missed the EC deadline, **and** it is beyond 30 days after the EC deadline, then he/she may request an extension under the “Good Cause Beyond 30 Days” provision.

There are 4 reasons a worker may be approved for a “Good Cause Beyond 30 Days” provision:

- Career Center or State staff directly discouraged the individual to file
- Determination / Notice never received
- Determination / Notice received after 30 days
- Intimidation, coercion, or harassment by employer

Notification that an individual has been informed of his/her potential eligibility for Trade benefits must be documented in MOSES (NOTES). To maintain potential eligibility for TRA, the individual will then have 60 days to either enroll in an approved training program or be approved for a waiver from the training requirement.

**No** other reasons will be accepted for a “Good Cause Beyond 30 Days” extension.

## **Revocation of Waivers**

The DCS Trade Act Coordinator shall revoke a waiver issued if it is determined that the basis of a waiver is no longer applicable to the individual and shall notify the individual in writing of such revocation.

## **Submission of Waivers for Approval**

Refer to pages 42-53 of the TAA MOSES Training Manual for specific instructions regarding how to create and submit for review, a training waiver request using MOSES.

## **Summary**

In order for an individual to be entitled to Trade Readjustment Allowances (TRA) he/she must be enrolled in training, participating in training, have completed training or *be under a "waiver" of training* by either the applicable deadline (depending on the filing date of the petition under which the individual is covered) or the 45-day "extenuating circumstance" deadline when applicable.

For those individuals covered under a petition filed on, or after May 18, 2009, TRA entitlement may also be preserved if, having missed all other deadlines, the individual has requested and been approved for an extension under the Good Cause Provision.