
GST MICHIGAN WORKS! POLICY 15-09 Change 1

TO: GST Michigan Works! Service Providers and Agency Staff

FROM: Jody Kerbyson, CEO

SUBJECT: Trade Adjustment Assistance Training Waivers

EFFECTIVE: February 06, 2017

PROGRAMS AFFECTED: Trade Adjustment Assistance (TAA)

REFERENCES: The Trade Act of 1974, Public Law (PL) 93-618, as amended
The Trade Act of 2002, PL 107-210
The TGAAA of 2009, PL 111-520
The TAAEA of 2011, PL 112-40
The TAARA 2015, PL 114-27
Trade Adjustment Assistance (TAA) Program Manual (Dated Dec 29, 2016).

RESCISSIONS: PI 15-09

BACKGROUND: The Trade Act of 1974, commonly referred to as Trade Adjustment Assistance (TAA), and the subsequent reauthorizations including the North American Free Trade Agreement (NAFTA), the Trade Act of 2002, the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA), the Trade Adjustment Assistance Extension Act (TAAEA) of 2011 and the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA) offer a full range of re-employment services to individuals displaced either by the importation of foreign-made goods or by the exportation of the work itself. TAA eligibility for a worker group is based on certification granted by the U.S. Department of Labor following research into the business conditions resulting in the loss of employment.

In this policy for simplicity, TAA will be used interchangeably to refer to the different versions of the program and, as needed, the unique requirements of each version of this Act will be referenced. While the eligibility requirements differ for each version of TAA, the benefits and available services are essentially the same.

Included in TAA is a provision for Trade Readjustment Allowance (TRA), a maintenance income benefit paid by the Unemployment Insurance Agency (UI) to qualifying individuals. To maintain eligibility for TRA the individual must be enrolled in training or have a training waiver in place within the time frame required by the version of TAA that covers their specific certification. The training waiver deadlines for each version of the Trade Act are detailed in this policy. The requirements and procedures used to issue, continue, extend, revoke or deny a waiver as described in this policy shall be applied to all TAA participants.

POLICY:

GST Michigan Works Agency and/or Service Providers are responsible for issuing, continuing, extending, revoking, and denying TAA training waivers. Waivers from training have very specific deadlines that must be adhere to. The policy below outlines the specific eligibility and requirements associated with each trade law.

Issuing a Waiver from Training

Adversely affected workers must be enrolled in TAA-approved training by the deadline imposed under the TAA of 2002, TGAAA of 2009, TAAEA of 2011 and TAARA of 2015 guidelines to receive TRA. If the adversely affected workers does not start training within 30 days of the deadlines outlined below, a training waiver can be issued by the MWA to preserve eligibility for Basic TRA.

Training waivers should not be issued at TAA benefit orientation since it is unlikely that comprehensive assessments can reasonably be conducted at that time.

Based on the certification number; Form TAA-802: *Waiver of TAA Training Requirement* will be used. Each of the four TAA laws have their own TAA-802 and staff must use the appropriate one for the worker's certification. This same form is used for tracking waiver reviews, extending or revoking waivers. Workers must complete and follow the steps when applying for a waiver from training.

TAA of 2002

(The last day of the 8th week after issuance of the certification or the last day of the 16th week after the worker's most recent qualifying separation).

- 1) Meet the "8/16" rule deadline; and
- 2) Complete a comprehensive assessment including an in-depth interview. The assessments required are TABE or Work Keys. O'Net – Interest Profilers maybe used for career exploration; and
- 3) Complete an Individual Service Strategy; and
- 4) Meet one of the six waiver issuance reasons below.

TGAAA of 2009

(The last day of the 26th week after issuance of the certification or the last day of the 26th week after the worker's most recent qualifying separation).

- 1) Meet the "26/26" rule deadline; and
- 2) Complete a comprehensive assessment including an in-depth interview. The assessments required are TABE or Work Keys. O'Net -Interest Profilers maybe used for career exploration; and
- 3) Complete an Individual Service Strategy; and
- 4) Meet one of the six waiver issuance reasons below.

The six waiver reasons are the same for 2002 and 2009 Law:

- a. Recall: Expected recall to employment;
- b. Marketable Skills: The individual possesses marketable skills for suitable employment;
- c. Retirement: The individual is within two years of retirement;
- d. Health: The individual is unable to participate in training due to health reasons;
- e. Enrollment Unavailable: However, enrollment in training is available within 60 days after the date of the determination
- f. Approved training is not reasonably available to the individual. (This includes no training is suitable for the worker at a reasonable cost, or no training funds are available).

TAAEA of 2011 and TAARA of 2015

(The last day of the 26th week after issuance of the certification or the last day of the 26th week after the worker's most recent qualifying separation).

- 1) Meet the "26/26" rule deadline: and
- 2) Complete a comprehensive assessment including an in-depth interview. The assessments required are TABE or Work Keys. O'Net-Interest Profilers maybe used for career exploration; and
- 3) Complete an Individual Service Strategy; and
- 4) Meet one of the three waiver issuance reasons below.

The three waiver reasons are the same for 2011 and 2015 Law:

- a. Health: The worker is unable to participate in training due to health reasons;
- b. Enrollment Unavailable: There has been a delay in the beginning date of training. (However, the first available enrollment date must be within 60 days of the date of this determination, unless there are extenuating circumstances).
- c. Training Not Available: Approved training is not reasonably available to the Individual. (This includes no training is suitable for the worker at a reasonable cost or no training funds are available.

Once a waiver issued, information will be entered in OSMIS and copies of all documents will be retained in the client's file. Once a waiver is issued the affected worker becomes an active TAA participant.

Exceptions to Waiver Deadlines - Applicable to all TAA Laws

The waiver deadlines imposed by each TAA law require adversely affected workers to make every effort to meet the time-limit requirements. The MWA must document its efforts to notify workers of the enrollment deadlines. However, in certain circumstances workers through no fault of their own, workers do not meet the deadline of application. MWA's are required to consider each of the following exceptions to the deadlines.

45-Day Extenuating Circumstance: Are unusual situations that are beyond the direct control of the worker, and that make enrollment within the otherwise applicable deadline impossible or impractical.

60-Day Post Notification: This exception covers the worker who did not meet the deadline because they were not notified of the TAA benefits. Upon notification, they have 60 days to apply. Examples include Company error, Worker name never appeared on company list or Temporary employees not on the list.

Good Cause: This exception allows for MWA's to consider the factors when time limits of TRA or enrollment training have not been met. See Chapter 11 in the TAA manual for a comprehensive list of good cause reasons.

Equitable Tolling: Only applies in circumstances in which a deadline was missed through no fault of the worker and the MWA has found that due diligence in taking all necessary actions to protect their eligibility for TAA benefits upon notification of the applicable deadline has been demonstrated. Reasons equitable tolling may be applied are when the worker was not: Included on a layoff list, Notified of the TAA certification or invited to a Worker Benefit Orientation.

Denial of a Waiver from Training

- Adversely affected workers applying for a waiver outside of these deadlines will be denied, if no exceptions can be applied.
- Denial of a waiver must be documented on Form TAA-802, *Waiver of TAA Training Requirement* and a copy of the form provided to the adversely affected worker.
- Adversely affected workers denied a waiver must be given the opportunity to appeal the determination. Information on appeal rights is located on TAA-802 *Waiver of TAA Training Requirement*.

30 Day Waiver Review Requirement

The Form TAA-802: *Waiver of TAA Training Requirement*, for all four trade laws must be issued for a six-month period and reviewed at least once every 30 days until the waiver expires or is revoked due to enrollment into training, expiration and or non-compliance. Waiver reviews must be conducted to determine if the reason for the waiver issuance continues to apply to the participant. The importance of the waiver review process, the participant's role in the process and their scheduled monthly contact date will be discussed during the interview and intake conducted by TAA staff. The participant is responsible for initiating the contact for the waiver reviews and can be done by in person, by phone, electronic mail or written mail correspondence. Waivers may be extended beyond the original six-month period, in cases in which it is necessary to cover the worker's full entitlement to basic TRA.

After each waiver review, the activity must be documented in the OSMIS and in the participant's file documenting the review on the TAA-802. All discussions/activities should also be included in Case Notes.

It is allowable to change the reason for the waiver during the waiver review process; however, both OSMIS and the TAA-802 must reflect the same reason.

Waivers should not be automatically revoked if the worker returns to work. The waiver may only be continued if one of the waiver reasons still applies. A review must include a determination of the worker's training needs.

Waiver Revocation

The MWA must revoke a waiver once the participant enrolls in TAA approved training or, if the reason for the waiver no longer exists. Examples include: the participant refuses to cooperate in waiver review process, Basic TRA benefits are exhausted, or the 104-week eligibility period for Basic TRA has expired.

- Once a waiver is revoked, it cannot be reissued unless the revocation is reversed by re-determination or appeal decision.
- Under no circumstances should a waiver be revoked without giving the individual ample opportunity to participate in the review process. If a participant fails to contact TAA staff within their waiver review timeframe, the following steps will be taken to contact the individual:
 1. Within 7 days of missing the review deadline, TAA staff will call the individual, leaving a message for a return call if no contact is made.
 2. If the first contact does not result in contact by the participant within 7 days of the contact, a letter will be sent warning the participant of impending waiver revocation if they do not respond within 14 days of the letter.
 3. All contact attempts shall be documented in the OSMIS case notes and copies of written communication included in the participant's file.
 4. If the above actions do not result in contact and cooperation from the participant, the waiver will be revoked and documented in both the OSMIS and the case file.
 5. For each missed waiver review, all steps in the process outlined above must be taken before a decision to revoke the waiver can be made.
 6. The individual shall be notified of the waiver revocation in writing using the TAA-802 form. Information about the individual's right to protest the revocation should be included with the notice.

If waiver reviews are not conducted and no other services are provided to the TAA participant for 90 days, OSMIS will "system exit" the registration. The MWA is notified of upcoming "system exits" and should make waiver revocation determinations in advance of this system action.

Trade Readjustment Allowance (TRA)

There are several types of TRA, which include Basic, Additional, Remedial/Prerequisite and Completion TRA. These allowances allow for income maintenance while the worker seeks work or participates in approved training. These benefits are important to the worker as receiving them can make the difference on whether they successfully complete a training or obtain work.

To be eligible for TRA, the affected worker must be enrolled in TAA approved training or receive a training waiver by the 8/16 or 26/26 deadline.

Basic TRA Weeks: Basic TRA benefits can be paid if the adversely affected worker is enrolled in training, qualifies for and receives a waiver of training or has completed an approved training program.

Additional TRA Weeks: Additional TRA is only paid if the adversely affected worker is participating in an approved TAA training program.

Remedial/Prerequisite TRA (TAA of 2002 and TGAAA of 2009 only): Remedial or Prerequisite TRA weeks are paid if the adversely affected worker has exhausted both Basic TRA and Additional TRA, and the MWA confirms that remedial or prerequisite courses have been taken.

Completion TRA (TAAEA of 2011 or TAARA of 2015 only): Completion TRA weeks may be paid to adversely affected workers who have exhausted Basic TRA and Additional TRA, and are still enrolled in a TAA-approved training program if the MWA has verified that benchmark reviews have been successfully met (or a training modification has been made after a failed benchmark review).

ACTION:

GST Michigan Works! Service Providers and Agency staff shall take the appropriate actions necessary to ensure all participants and their files meet all the directives of this policy issuance. Service Provider officials shall ensure the information contained in this policy is disseminated to all appropriate staff.

INQUIRES:

Questions regarding this policy issuance should be directed to John Anderson 810-233-5974 Ext. 159 or JulAnn Kuenzli 989-635-3561 Ext. 230

SIGNED:


Jody Kerbyson, CEO

2-6-17
Date