

# Washington State Trade Readjustment Allowances Policy

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**Policy Number:** 3100 (2011)

**Policy Title:** Trade Readjustment Allowances (TRA)

**Effective Date:** June 24, 2016

## **1. Purpose:**

To communicate the policy on Trade Readjustment Assistance (TRA) for petitions certified under 2011 rules (petition numbers TA-W 80,000 – 80,999).

## **2. Background:**

The Trade Adjustment Assistance for Workers Program (TAA program) was first established in the Trade Act of 1974 as a tool to retrain trade impacted workers and help them find suitable employment. The TAA program had a two-step process. First, a group of workers (or other specified entity) file a petition for certification of eligibility with the Office of Trade Adjustment Assistance (OTAA). Second, workers who are part of a group covered by a certified petition apply individually to a state for benefits and services.

Since its first enactment in 1974, the Trade Act has been amended numerous times. Likewise, TAA program rules and requirements have evolved with each new law. The 2011 Amendments changed the provisions of 2009 in some significant ways.

The Trade Adjustment Assistance Extension Act (TAAEA) of 2011 (Public Law 112-40) was signed into law on October 21, 2011, by President Obama. The TAAEA again reauthorized the TAA program, but reduced the scope and benefits added under the 2009 amendments.

The 2011 Amendments include a reduction in number of eligible groups qualified for TAA, elimination of three training waivers, elimination the additional 26 weeks of TRA for workers participating in prerequisite or remedial training, and the addition of a new Completion TRA component.

The 2011 amendments apply to petitions filed on or after October 21, 2011 and numbered above 81,000. There is also special retroactive applicability for petitions numbered 80,000 – 80,999. Eligible workers with petitions in this range were able elect to receive benefits in accordance under either 2002 or 2011 amendments.

## **Election Option**

Election eligibility was based upon dates the individual worker received TAA benefits under petitions numbered 80,000 – 80,999. Workers who qualified for TAA benefits prior to December 20, 2011, received a notice advising them of a one-time opportunity to switch from benefits under the 2002 program to 2011. The one-time election had to be made between December 20, 2011 and March 19, 2012. Workers not electing 2011 benefits, continued TAA benefits under the 2002 Act.

Workers who did not receive any TAA benefits prior to December 20, 2011, were covered under the 2011 TAA program once they applied for TAA. They were NOT given an election option.

### **3. Policy:**

Trade Readjustment Allowance (TRA) provides financial support to participants while enrolled in full-time TAA approved training or conducting a work search under a waiver of training. TRA is not available until all eligibility for unemployment insurance (UI) benefits and applicable extensions are exhausted. There are three types of TRA:

- Basic TRA is payable if the TAA participant is enrolled or participating in TAA approved training or has obtained a waiver of training requirement. Basic TRA can also be paid to participants who are conducting a work search following training.
- Additional TRA is payable only if the TAA participant is actively attending TAA approved training and has exhausted all rights to Basic TRA.
- Completion TRA is payable only if participant is attending TAA approved training, has exhausted all rights to Additional TRA and has met the training benchmarks as described in the TAA Classroom Training Procedures – Extension Act of 2011(XXXX). Assuming all other requirements are met a participant may qualify for up to 13 weeks of Completion TRA payable during the 20-week period beginning with the first week in which the worker files a claim for completion TRA.

#### **a. TRA Eligibility Requirements**

- i. To be eligible for TRA benefits, adversely affected workers must meet the following requirements:
  - Certification –
    - The worker must be an adversely affected worker covered by a certification.
    - The worker must be laid off because of lack of work from adversely affected employment.
  - Separation –
    - The worker's first qualifying layoff must have occurred on or after the impact date of the certification and on or before the expiration date of the certification;
  - Wages and Employment –
    - In the 52-week period ending with the week of the worker's first qualifying separation or any subsequent qualifying layoff under the same certification, the worker must have had at least 26 weeks of employment at wages of at least \$30 or more a week with the

- certified employer.
  - Entitlement to UI –
    - At the time of the first layoff on or after the impact date, the worker must be monetarily eligible for unemployment.
    - The TAA eligible worker does not have to file a claim, but they must have had enough hours of work and wages to establish a benefit year.
  - Exhaustion of UI –
    - The worker must have exhausted all rights to unemployment insurance benefits or applicable extensions.
  - Extended Benefits (EB) Work Test –
    - The EB work test requirement is also applicable to claimants for basic TRA, except when the individual is in and/or participating in an approved TAA training program as provided at 20 CFR 617.17 (b)(2).
  - Participation in TAA training –
    - The individual must be enrolled in or participating in TAA training; or have completed training following qualifying separation (only basic TRA); or have received a waiver from the TAA training (only basic TRA).
- ii. If the worker does not meet the minimum 26-week employment and wage requirement, a week of employment shall be added, up to a maximum of 7 weeks, for each week that one of the following conditions exist:
- The certified employer authorized leave for vacation, sickness, injury, maternity or inactive duty or active duty military service or training;
  - A worker's employment was interrupted to serve as a full-time representative of a labor organization in the affected firm or subdivision.
- iii. The trade-affected worker shall be eligible for up to a maximum of 26 weeks for each week that one of the following conditions exists:
- The worker could not work for the adversely affected employer due to a disability compensable under state or federal worker's compensation laws;
  - The worker is on call-up for active duty in reserve status in the US armed forces after August 1, 1990.
- iv. If TAA eligible workers are not eligible for TRA benefits because they did not meet the qualifying requirements, they may still be eligible to apply for training, job search allowances, relocation allowances, wage subsidy for older workers program and reemployment services.

## **b. Determining the Parent Claim**

- i. The first qualifying layoff is the first layoff of at least seven consecutive days after the impact date of the petition.
- The unemployment claim in effect at the time of the first qualifying layoff is the TRA parent claim.
  - The weekly benefit amount for Basic and Additional TRA is the same as the weekly benefit amount of the TRA parent claim.

- ii. The most recent claim is not always the TRA parent claim.
  - The Washington State TRA Coordinator will determine the TRA parent claim when determining eligibility for TRA.

### c. TRA Deadlines and Special Rules

Participants in the TAA program must meet one of the following criteria for basic TRA:

- Be participating in approved training or be within 30 days of the start of approved training;
- Have completed an approved training plan and be actively seeking work; or
- Be on a training waiver.

As with the 2009 program there is no waiting period after certification to receive TRA payments under 2011 rules. Under the 2002 Reform Act, there was a 60-day waiting period following certification. For example, if a worker is laid off applies for UI January 1, but the company does not file for TAA certification until July 1, the worker's UI benefits may be exhausted by then. The TAA participant can claim TRA benefits as soon as the certification has been made and regular benefits are exhausted.

These deadlines apply for eligibility for any TRA payment, including basic TRA, additional TRA, and Completion TRA.

- i. To receive TRA, the TAA participant must be enrolled in TAA approved training by;
  - The last day of the 26th week after the TAA participant's most recent qualifying layoff; or
  - The last day of the 26th week after the week that the Department of Labor issued the certification.
- ii. Exceptions to the Enrollment in Training / Waiver from Training Deadlines

The TAAEA provides for additional justifiable cause exceptions for a TAA eligible worker who misses application and enrollment deadlines. The Washington State TRA Coordinator will make all determinations regarding any of the following extensions:

1. 45 Days for Extenuating Circumstances:

Circumstances beyond the control of the worker allow an extension of the deadlines up to 45 days. This includes situations where training programs are abruptly cancelled as well as when a worker suffers injury or illness preventing participation in training.

2. 60 Days after Actual Notification of the Exception to the Enrollment Deadlines:

Circumstances deemed to be beyond the worker's control, such as failure of the cooperating state agency to notify the worker, justify an extension of the eligibility periods. This is the worker centric exception. The worker must meet the enrollment deadlines by Monday of the first week occurring 60 days after the date that the worker was properly notified of both his/her eligibility to apply for TAA training and the requirement to enroll in training

absent a waiver of the training requirement.

3. 30 Days after the Termination of a Waiver:

To maintain eligibility for Additional TRA, workers with a training waiver must be enrolled in training prior to the first Monday, 30 days following the termination of the waiver, either by expiration (end of Basic TRA) or revocation.

Example 1: If the 30<sup>th</sup> day following the termination of the waiver is Sunday, the participant must be enrolled before Monday, so Friday of the previous week is the deadline.

Example 2: If the 30<sup>th</sup> day following the termination of the waiver is Wednesday, the deadline is Friday of the same week.

Example 3: If the 30<sup>th</sup> day following the termination of the waiver is Monday, the participant has until Friday of that week.

iii. Special Rules

The TAAEA provides for an extension on the eligibility period that TRA (basic and additional) is payable. The State TRA Coordinator will issue all determinations regarding any of the following extensions:

1. For Calculating Separations - Judicial or Administrative Appeal

In the event a certification is issued as a result of an appeal of an earlier denial of certification, the 104- week eligibility period for Basic TRA will begin the week following the week the group was certified. In this case, the applicable enrollment in training deadline will be 26 weeks after the certification is issued.

2. For Justifiable Cause to Extend the Eligibility Periods for TRA

A new rule allows for an extension for justifiable cause of periods that TRA (basic and additional) are payable. Justifiable cause means circumstances determined to be beyond the worker's control. Washington Unemployment Insurance laws, regulations, and policies regarding good cause apply to this determination.

3. For Military Service

Veterans must be afforded priority of service. The 2011 TAAEA continues with the same 2009 rules for returning service members. Members of the armed forces and National Guard who are called to active duty while a TAA participant are considered "whole," as if the period of military services had not occurred.

The provision allows workers called up for active duty for 30 days or more to restart the TAA enrollment process after completion of military service. This includes workers who had begun, but had not completed, a training program

before being called up for active duty, and those workers whose company is certified while the workers are serving on active duty.

If the participant began training prior to active duty call-up, the participant is allowed to complete that training. However, the worker need not have been enrolled in or have begun training before the period of duty for this provision to apply. When separated, these individuals are eligible to receive TRA, training and other benefits under the 2011 amendments in the same manner and extent as if the worker had not served the period of duty.

The State will toll all deadlines for all TAA, and RTAA benefits and services, as well as TRA eligibility periods, during a service member's period of duty which occurs before the individual completes TAA-approved training. The State must first consult with and receive the Department's permission, before waiving any other TAA requirement.

iv. For the Use of Federal Good Cause Provisions

The TAAEA establishes a new Federal Good Cause provision that allows for a waiver for good cause of deadlines relating to time limitations on filing an application for TRA or enrolling in training. This provision supersedes the state good cause provision applicable to these deadlines under the 2009 Amendments.

The TRA Coordinator must waive the time limitations with respect to an application for TRA benefits or enrollment in training at any time after making a determination that there is good cause for issuing a waiver in accordance with the Federal standard.

The federal standard requires states to consider the following factors, if relevant, before waiving these time limitations. These factors are:

- Whether the worker acted in the manner that a reasonably prudent person would have acted under the same or similar circumstances.
- Whether the worker received timely notice of the need to act before the deadline passed.
- Whether there were factors outside the control of the worker that prevented the worker from taking timely action to meet the deadline.
- Whether the worker's efforts to seek an extension of time by promptly notifying the state were sufficient.
- Whether the worker was physically unable to take timely action to meet the deadline.
- Whether the worker's failure to meet the deadline was because of the employer warning, instructing or coercing the worker in any way that prevented the worker's timely filing of an application for TRA or to enroll in training.
- Whether the worker's failure to meet the deadline was because the worker reasonably relied on misleading, incomplete, or erroneous advice provided by the state.
- Whether the worker's failure to meet the deadline was because the state failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker's entitlement to TRA.

- Whether there were other compelling reasons or circumstances which would prevent a reasonable person under the circumstances presented from meeting a deadline for filing an application for TRA or enrolling in training including:
  - Neglect, a mistake, or an administrative error by the state,
  - Illness or injury of the worker or any member of the worker's immediate family
  - The unavailability of mail service for a worker in a remote area
  - A natural catastrophe such as an earthquake or a fire or flood
  - An employer's failure or undue delay in providing documentation, including instructions, a determination or notice or pertinent and important information
  - Compelling personal affairs or problems that could not reasonably be postponed such as an appearance in court or an administrative hearing or proceeding, substantial business matters, attending a funeral, or relocation to another residence or area
  - The state failed to effectively communicate in the worker's native language and the worker has limited understanding of English
  - Loss or unavailability of records due to a fire, flood, theft or similar reason. Adequate documentation of the availability of the records includes a police, fire or insurance report, containing the date of the occurrence and the extent of the loss or damage.

In cases where the cause of the worker's failure to meet the deadline for applying for TRA or enrolling in training was the worker's own negligence, carelessness, or procrastination, a state may not find that good cause exists to allow the state to waive these time limitations.

**d. Reporting Wages during TAA-approved Training while claiming TRA (Earnings disregard)**

Trade Act requires a reduction in the TRA amount payable for a week of unemployment insurance (UI) of all income that is deductible from UI using the applicable state law. Wages less than or equal to the TRA weekly benefit amount are not deductible from TRA when participating in full-time training.

Wages greater than the TRA weekly benefit amount are deductible for TRA benefits using the standard earnings deduction chart.

Note: The computation for the earnings deduction on the Washington State standard earnings deduction chart is, gross earnings minus \$5, times 75%. All deductions are rounded up to the next higher dollar.

Example 1: A participant attending full-time TAA training has a TRA weekly benefit amount of \$400. He works 20 hours and earns \$17.50 per hour for a total of \$350. The \$350 is less than his TRA weekly benefit amount, so nothing is deducted from his TRA benefits. He receives the full \$400 in TRA benefits.

Example 2: The same participant above works 40 hours and earns \$17.50 per hour for a total of \$700. The \$700 is greater than his TRA weekly benefit amount by \$300. Using the standard earnings deduction chart for \$300, his TRA benefits are reduced

by \$222. He receives \$178 in TRA benefits.

In this example, the calculation would be 40 hours times \$17.50 per hour, totaling \$700 in gross earnings. \$700 gross earnings minus \$400 TRA weekly benefit amount, equals \$300 deductible earnings (this is the amount above the TRA earnings disregard). \$300 deductible earnings minus \$5, times 0.75, equals \$221.25, which is rounded up to the next complete dollar for a \$222 standard earnings deduction. \$400 TRA weekly benefit amount minus the \$222 standard earnings deduction equals a \$178 TRA payment after earnings disregard and standard earnings deduction.

#### **e. Waiver of TAA Training Requirements to Receive TRA Benefits**

Unless enrolled in training, individuals on state extended benefits, or Basic TRA must be directed to conduct a more enhanced job search using EB work search criteria.

For internal procedures in the issuance, review and revocation of a waiver refer to TAA Classroom Training Policy #3045 (P.2) and Waiver from Training Guidelines.

Waivers from the training deadline are used to:

- Allow TAA workers to meet the 26-week after layoff or 26-week (26/26 week) after certification deadline to preserve Basic TRA benefit eligibility;
- Allow TAA eligible participants not in training to collect Basic TRA using the EB work search standard. In most cases this is an interim measure until a training plan is approved.

##### **i. Waiver Conditions**

2011 Amendments reduced the number of training waiver conditions from six (6) to three (3). An individual must meet one of the three (3) waiver conditions before issuing a waiver of training and only check one when issuing a waiver.

###### **1. Health –**

- Training can be waived if an individual is unable to participate in training due to health issues.
- A letter from a doctor or other appropriate medical documentation is required.
- While we may allow a waiver for health reasons, the participant must still be able, available and actively seeking work and on an EB work search plan, if receiving state extended benefits, or Basic TRA.

###### **2. Enrollment unavailable –**

- When an individual is seriously considering a specific training plan but they cannot enroll in the program right away.
- If training will begin later than 60 days after the date of waiver approval, the reason for the delay in enrollment (the 'extenuating circumstances'), must be noted.

###### **3. Training not available –**

- When an individual is not able to find training that is reasonably available and at a reasonable cost.
- Distance learning options may be available, and should be explored, but are not appropriate for all individuals or training programs.

##### **ii. Reasons to Deny Waiver**



Waivers cannot be approved if the individual is past the 26-weeks after layoff or 26-weeks after certification deadline to request a waiver unless the 45 day extension of the training deadline for an extenuating circumstance applies.

iii. Reviewing and Duration of Waivers

- The first waiver review must be in 90 days and then every 30 days thereafter.
- Waivers are effective for not more than 6 months from the date issued.
- To preserve the worker's eligibility for TRA, the state TRA Coordinator may approve extending the waiver for another 6 months and for the time necessary to protect the worker's eligibility for basic TRA.

iv. Revoking a Waiver

- Waivers from training need to be revoked anytime the conditions of the waiver are no longer applicable.
- The participant must be notified of the revocation in writing.
- To be eligible for additional TRA the participant must be in TAA approved training by the Monday of the first week occurring 30 days after the date of the revocation.

v. Waiver Expiration

At the end of the 6-month waiver period, if a reassessment of the participants' case does not indicate a need to extend the waiver period, the waiver will expire.

**f. Basic TRA**

- i. To be eligible for Basic TRA benefits, a TAA participant must exhaust regular UI, all extensions, or have an expired claim.
- ii. The eligibility period for Basic TRA is the 104-week period following the week of the participant's last total qualifying layoff from Trade impacted employment.
  - A total qualifying layoff for TRA purposes is a layoff of 7 days or more.
  - The eligibility period is reset following each subsequent qualified layoff, provided the TAA participant meets the criteria for a valid TRA claim.
  - The TRA weekly benefit amount is always the same as the UI weekly benefit amount from the parent claim, even if the 104-week eligibility period is reset.
  - The Basic TRA eligibility period could end before the actual Basic TRA maximum amount is received.
- iii. The maximum Basic TRA amount payable is 52 times the TRA weekly benefit amount from the parent claim minus the total sum of unemployment insurance the TAA participant was entitled under that claim and, if applicable, any benefit extensions, regardless of whether or not the TAA participant actually received the benefits.

- In the case of Washington TAA participants, the regular unemployment insurance entitlement is up to a maximum of 26 weeks.
- iv. To receive Basic TRA under the 2011 TAAEA certifications, the TAA participant must:
    - Be enrolled in TAA approved training by the later of:
      - The last day of the 26th week after the TAA participant's most recent qualifying layoff; or
      - The last day of the 26th week after the week the Department of Labor issued the certification.

Or

    - Be participating in or within 30 days of starting TAA approved training; or
    - Have completed a TAA approved training plan and be actively seeking work; or
    - Be on a training waiver.
  - v. If TAA participants complete approved TAA training and still have a Basic TRA balance, they may continue collecting benefits while doing an EB work search.
  - vi. TAA participants must be fully registered in the case management system, and TAA case manager takes an active role to help participant secure employment.

#### **g. Additional TRA**

To accommodate breaks in training, the participant may collect 65 weeks of Additional TRA benefits during a span of 78 weeks.

- This rule enables workers to participate in longer training, such as a two-year Associate's degree, a nursing certification, or completion of a college degree, advanced degree or certification.
  - Additional TRA can be paid to participants who are entitled to TRA.
  - Payments of Additional TRA may be made only for those weeks during the 78-week eligibility period that the TAA participant is actually participating in TAA approved training.
  - These funds may not be used for additional time to job search after completing training or during waivers of training.
- i. The 78 Week Eligibility Period
 

The 78-week eligibility period begins:

    - The immediate week after the TAA participant exhausts Basic TRA; or
    - The week that the TAA participant begins participating in full-time TAA approved training (this occurs when training starts after all rights to UI and Basic TRA are exhausted).
  - ii. Participants who are not eligible for Basic TRA or Additional TRA benefits because they did not meet the qualifying requirements are still eligible to apply for training, job search allowances, relocation allowances, Reemployment Trade Adjustment Assistance (RTAA) wage subsidy for older workers program and reemployment services.

#### **h. Completion TRA**

Completion TRA (additional period of up to 13 weeks of income support) is payable only if participant is attending TAA approved training and has exhausted all rights to Additional TRA.

- i. Assuming other TRA eligibility requirements are met (has met the training benchmarks as described in the TAA Classroom Training Procedures – Extension Act of 2011(XXXX) participant may qualify for up to 13 weeks of Completion TRA, that can be paid over a 20 week period, when all of the following five additional criteria are met:
  1. The requested weeks are necessary for participant to complete a training program that leads to completion of a degree or industry recognized credential; and
  2. The participant is attending training in each week; and
  3. *The participant has substantially met the performance benchmarks established* in the approved training plan (must have maintained satisfactory academic standing and be scheduled to complete training within training plan specified timeframe); and
  4. The participant is expected to continue to make progress toward completion of approved training; and
  5. The participant will be able to complete training during the period authorized to receive Completion TRA.

#### **i. Breaks in Training**

- i. Eligibility for Basic and Additional TRA continues during scheduled breaks in training, but only if a scheduled break is no longer than 30 days (not counting weekends and holidays) and all of the following additional conditions are met:
  - The TAA participant was participating in TAA approved training immediately before the beginning of the break,
  - The break is preapproved in the published academic schedule, or the previously established schedule of training issued by the training provider, or is indicated in the training program approved for the TAA participant; and
  - The TAA participant resumes participation in training immediately after break.

#### **j. Payment During A Break**

The following formulas are used to determine a TAA participant's eligibility for payment during a break:

- i. The break begins on the day following the last day of scheduled training and up to the last day of the break preceding the next scheduled day of training.
  - Weekend days are not counted unless they are normally scheduled for training.
  - Official state and federal holidays are not counted.
  - If a training facility closes before a scheduled break because of an emergency situation, any days of closure due to the emergency are not counted as part of the break.
  - If a TAA participant attends classes only two or three days in a week, the break is counted in the same manner outlined above.
    - The counting of break days is dependent on the schedule of the training facility and not the schedule of the participant in training.

- However, a TAA participant can be paid for any week during which at least one day of training is scheduled and attended.
- ii. If the number of days is 30 days or less, the TAA participant can be paid during the entire break.
- iii. If the number of days is more than 30 days, the TAA participant cannot be paid Basic or Additional weeks of TRA during the full weeks of the break. This includes summer breaks.

**k. Extended Benefits Work Test**

- i. Participants, who have not exhausted Basic TRA benefits and have completed training, must meet the requirements of the Extended Benefits Work Test, as follows:
  - Be able to work;
  - Be available for work;
  - Register for work and be available for referral or accept referral to suitable work by the TAA case manager;
  - Apply for any suitable work the TAA participant is referred to by the TAA case manager;
  - Accept any offer of suitable work; and
  - Actively engage in seeking work and furnish the TRA unit with tangible evidence of four such efforts each week.

**l. Overpayments**

If the State agency or a court of competent jurisdiction determines that any individual has received any TAA program benefits, including TRA benefits to which such individual was not entitled, such individual shall be liable to repay such amount to the State agency.

- i. TRA overpayments may be recovered by deduction from any sums payable under TRA, Federal unemployment compensation, or other Federal benefits paid with respect to unemployment under a program administered by the State agency, and, if appropriate, State UI.

**m. Waiver of Recovery of TRA Overpayments**

Recovery of overpayments of TRA must be waived if it would cause a financial hardship for the individual or the individual's household, when taking into consideration the income and resources reasonably available to the individual or household and other ordinary living expenses of the individual.

The intent of Congress is that overpaid individuals who are without fault and unable to repay their TRA overpayments must be granted a reasonable opportunity for waivers of overpayments.

**4. Definitions:**

None.

**5. References:**

- [Public Law 93-618](#), Trade Act of 1974, as amended
- [Public Law 107-210](#), Trade Adjustment Assistance Reform Act of 2002
- [Public Law 112-40](#), Trade Adjustment Assistance Extension Act of 2011
- [20 CFR Part 618](#), TAA Final Rule
- [Training and Employment Guidance Letter \(TEGL\) 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; [Change 1](#)
- Information on TRA for unemployment insurance staff is contained in section 5925 of the internal, electronic UI Resource Manual (UIRM)

**6. Supersedes:**

None.

**7. Website:**

[Workforce Professionals Center](#)

**8. Action:**

Employment Security Regional Directors and WorkSource Administrators must distribute this policy broadly throughout the system to ensure that WorkSource System staff are familiar with its content and requirements.

**9. Attachments:**

None

**Direct Inquiries To:**

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