

Washington State Alternate Trade Adjustment Assistance Policy

Policy Number: 3200 (2021)

Policy Title: Alternate Trade Adjustment Assistance (ATAA)

Effective Date: January 4, 2022

1. Purpose:

To communicate the policy on Alternate Trade Adjustment Assistance (ATAA) for petitions fall under the 2021 reversion (petition numbers TA-W 98,000 +).

2. Background:

The Trade Adjustment Assistance for Workers Program (TAA program) was established in the Trade Act of 1974 as a tool to retrain trade-affected workers and help them find suitable employment. The TAA program has a two-step process:

1. A group of workers, an employer, a union, or the state, file a petition for certification of eligibility with the Office of Trade Adjustment Assistance (OTAA).
2. Workers, who are part of a group covered by a certified petition, individually apply to a state for benefits and services.

Since its enactment in 1974, the Trade Act has been amended numerous times. Likewise, TAA program rules and requirements have evolved with each new law.

The Trade Act of 1974 (Public Law No. 93-618), as amended (codified at 19 U.S.C. §§ 2271 et seq.), Title II, Chapter 2, established the Trade Adjustment Assistance (TAA) for workers, Reemployment Trade Adjustment Assistance (RTAA), and Alternative Trade Adjustment Assistance (ATAA) programs. These programs are collectively referred to as the Trade Adjustment Assistance Program (TAA Program).

The TAA program seeks to provide individuals who have been adversely affected by foreign trade with opportunities to obtain the skills, credentials, resources, and support necessary to rebuild skills for future jobs.

The U.S. Department of Labor (USDOL) Employment and Training Administration (ETA) has oversight of the program and determines if a company receives a petition certification. Any member of a certified group may be eligible to receive TAA case management and services, including income support in the form of Trade Readjustment Allowances (TRA) or wage supplements for reemployed older workers in the form of RTAA or ATAA.

These benefits are payable under state UI laws in accordance with applicable [federal rules and regulations](#).

3. **Policy:**

Under the 2021 reversion, this wage subsidy program provides some individuals 50 years old or older who find full-time employment in lieu of receiving certain Trade Adjustment Assistance (TAA) benefits to be eligible to receive 50% of the difference between their new salary and old salary for two years (104 weeks) or up to a maximum of \$10,000.

As part of the termination provisions of the program, ATAA is only available to individuals who have begun to receive these payments as of June 30, 2022.

ATAA is also covered in TAA policy 3015 – Alternative Trade Adjustment Assistance ([2021](#)).

a. Applicable state law

- i. The applicable state law for the TAA Program is the state law of the state in which individuals:
 - Are entitled to UI (even if they have not filed a claim) immediately following their first separation from Trade-affected employment; or
 - Had their first separation from Trade-affected employment, if they are:
 - Not entitled to UI under any state law immediately following their first separation; or
 - Entitled to UI under the Railroad Unemployment Insurance Act (RRUI).

Example: Dan is receiving unemployment benefits from Washington. Washington's state UI law applies.

Example: Wendy separates from the Trade-affected employer in Washington and begins working full-time in Idaho, so hasn't filed an unemployment claim. Her first separation was in Washington, so our UI laws apply.

- ii. The state law will remain the applicable state law for individuals until they become entitled to UI under the state law of another state (even if they have not filed a claim). The applicable state law changes when:
 - Individuals satisfy the base period employment and wage qualifying requirements of another state;
 - In the case of a combined-wage claim, individuals become entitled to UI as determined under the law of another paying state; or
 - In the case of a federal UI claim or a joint state and federal UI claim, individuals become entitled to UI as determined under the law of another state.

Example: Joy was receiving unemployment benefits from Washington but now meets the eligibility requirement for a claim in Oregon. Oregon's state UI law applies from the point she met the eligibility requirements, even if Joy doesn't file a claim in Oregon.

Example: Norma separates from the Trade-affected employer and begins working full-time in Idaho. She is temporarily laid off and qualifies for an Idaho claim. Idaho's state UI law applies from the point she met the eligibility requirements, even if Norma doesn't file a claim in Idaho.

- iii. The state whose UI laws apply is the liable state. All non-monetary issues of the liable state apply to TRA entitlements. Any state that provides benefits or services to individuals is an agent state. A state can be both an agent state and a liable state.
- iv. Individuals are not required to apply for UI to be eligible for the ATAA program. Nor is there a requirement that they be eligible for UI. ATAA and UI are statutorily separate programs. UI is for individuals who are unemployed or partially unemployed; ATAA is for individuals who are employed on a full-time basis as defined by state law in the state they are employed. Individuals receiving ATAA are not eligible for UI unless they become unemployed or partially unemployed, at which time they become ineligible for ATAA.

a. Liable and agent state

i. Liable state.

The liable state is the one whose state UI laws apply.

The liable state is responsible for:

- Making all determinations, redeterminations, and decisions;
- Providing individuals with general program information;
- Providing rapid response assistance and appropriate career services;
- Providing a list of eligible TAA recipients and eligible RTAA or ATAA recipients to the IRS for HCTC purposes; and
- Providing information and assistance to trade-affected workers, including:
 - Reemployment services,
 - Information after issuance of a certification, and
 - Specific benefit assistance.
- Cooperating fully with the agent state by providing information needed to carry out its responsibilities, activities, and functions.

ii. Agent state.

The agent state is the state that provides benefits or services to a trade-affected worker.

An agent state is responsible for:

- Providing interstate individuals with general program information and assistance;
- Cooperating fully with the liable state in carrying out its responsibilities, activities, and functions; and
- Cooperating with the liable state by providing information needed to make determinations, redeterminations, and decisions.

Note: A state can, and in most instances will, be both the agent and liable state for individuals. When this happens, the state is responsible for all the activities and functions cited for both the agent and liable state. A state remains both the agent and liable state until individuals enroll and receive services in another state or qualify for a UI claim in another state.

Example: Greg was receiving unemployment benefits from Washington but now meets the eligibility requirement for a claim in Oregon. Oregon's state UI law applies, even if Greg doesn't file a claim in Oregon, and they become the liable state from the point he met the eligibility requirements.

Example: Gary is receiving unemployment benefits from Washington but is receiving case management services from Hawaii. Washington is the liable state and Hawaii is the agent state.

Example: Scott is receiving unemployment benefits from Alaska but is receiving case management services from Washington. Alaska is the liable state and Washington is the agent state.

Example: Tim is receiving unemployment benefits and case management services from Washington. Washington is both the liable state and agent state.

Example: Larry separates from the Trade-affected employer in Washington and immediately begins working at XYZ Company in Oregon and hasn't filed an unemployment claim. His first separation was in Washington, so our UI laws apply, and we are the liable state. However, Oregon's law regarding full-time employment applies to his RTAA eligibility. To determine his RTAA eligibility, we must check with Oregon to determine if his employment is considered full-time in Oregon.

- iii. ATAA specifies that the determination of full-time employment be based on the state law of the state where individuals are employed or, if they don't have a definition in state law, must be defined for ATAA purposes. There will be instances where the agent state and liable state have different definitions of full-time employment. In these cases, the liable state will find it necessary to use the agent state's definition of full-time employment in making the eligibility determination for the program.
- iv. Agent and liable state responsibilities are also covered under TAA Policy 3090 – Agent State and Liable State Responsibilities ([2021](#)).

b. Applications

ATAA cannot be paid prior to the issuance of a written determination. Individuals must apply for ATAA within the 104-week eligibility period. The 104-week eligibility period during which individuals must apply and during which ATAA benefits can be paid, begins with the date of the first qualifying reemployment.

- i. We must ensure that individuals applying for ATAA are aware that:

- They must indicate that a choice has been made and that they understand they cannot subsequently switch to the TAA program once they begin receiving the ATAA wage supplement; and
 - Their receipt of the initial ATAA payment represents their decision of choosing ATAA and voids their rights to training, job search allowances, and TRA.
 - They do not give up rights to any benefits until they receive the first ATAA payment; and
 - Once they receive an ATAA payment, they cannot return to receiving TRA payments.
- ii. We must issue a written determination informing ATAA applicants of eligibility for ATAA payments within five working days of receiving their applications for ATAA.
 - iii. Applicants have the right to appeal state determinations that deny ATAA benefits in the same manner as provided for in state law for UI determinations.

c. Program eligibility verification

In addition to all other eligibility criteria, individuals must also be authorized to work in the United States to receive benefits under the TAA Program. We are required to verify the status of individuals who are not a citizen or national of the United States.

- i. Initial verification.

Section [1137](#)(d) of the Social Security Act (SSA) (42 U.S.C. 1320b-7(d)) requires as a condition of eligibility for unemployment insurance (UI) benefits, that everyone declare under penalty of perjury whether they are a citizen or national of the United States. We are required, to initially verify the immigration status of self-reporting aliens who apply for UI through the system designated by the U.S. Customs and Immigration Service (USCIS), currently the Systematic Alien Verification for Entitlement (SAVE) program. No further verification is required unless reverification is required below.

- ii. Reverification.

Once we have initially verified satisfactory immigration status, we must:

- Reverify the individuals' immigration status, if the documentation provided during initial verification will expire during the period in which they are potentially eligible to receive benefits under the TAA Program.
- Conduct this redetermination in a timely manner, using the immigration status verification system described in section 1137(d) of SSA or by review of other documentation, as described in that provision.

d. Qualifying requirements

To be eligible for ATAA under the 2021 reversion, individuals:

Must:

- Be covered under a TAA certification that includes ATAA;

- Be age 50 at the time of reemployment or reach the age of 50 during such employment;
- Obtain reemployment within 26 weeks after trade affected layoff;
- Be employed on a full-time basis (can be multiple employers; must apply separately for each employer);
- Be reemployed with wages not to exceed \$50,000 annually, excluding overtime and bonuses;
- Apply for ATAA within 104 weeks of the first day of qualifying reemployment; and
- Provide verification of continued employment by submitting pay stubs monthly.

May:

- Reapply for ATAA if subsequent employment is obtained within 104 weeks from the date of original reemployment.
- Receive payment when individuals are on employer allowed release time, such as sick leave or unpaid holidays; however, ATAA is not payable during periods of unemployment.

Must not:

- Have received Trade Readjustment Allowances (TRA);
- Have received Trade Adjustment Assistance (TAA) training;
- Have received out of area job search assistance;
- Return to the Trade-affected firm from which they were separated; or
- Earn reemployment wages exceeding \$50,000 annually.

Example: Jessica is not yet 50 years of age and won't reach 50 during the 26-week eligibility period to apply for ATAA. Even though she is covered by a certification that includes ATAA, she doesn't meet the eligibility requirements for ATAA.

Example: Gloria is covered by a certification that includes ATAA. She earns less than \$50,000 annually is at least 50 years old when she obtained full-time reemployment. However, she received two weeks of TRA benefits, so doesn't meet the eligibility requirement for ATAA.

i. Age at time of employment.

Individuals may be age 50 at the time of reemployment or reach the age of 50 during such employment. However, wage subsidy payments may only be made for periods after individuals have reached age 50 and meets all ATAA requirements.

Example: Deven is age 49 and found reemployment. He doesn't meet the age requirement for RTAA, but as soon as he turns 50, he meets the age requirement. If he meets all the other requirements for RTAA, he may be eligible for any period after he turns 50 years of age.

ii. Covered employment.

Employment for ATAA must be covered employment under State law; however, employment may not include activity that is unlawful under federal, state, or

local law. This employment may include work involving wages plus commission or piece work.

Example: Katrina is certified under the 2021 reversion and is at least 50 years of age. She finds employment at the local recreational cannabis store that pays less than \$50,000 annually. Because the sale of recreational cannabis is not legal under federal law, this reemployment would not qualify for ATAA.

iii. Evidence of qualification.

Depending on the specific eligibility criterion, documentation may include materials such as:

Proof of Age Eligibility	Proof of employment (Trade affected and Re-employment Employer)		Other documents
Current Driver's License or ID	Check / Pay Stub (from both employers if possible)	W-2 forms	Document referring to date of qualifying separation
Birth Certificate	Supporting statement from the employer	Annual earnings statements	Copy of Job offer letter (re-employment full-time hours)

Or other official documentation as required or requested.

iv. Full-time employment.

In Washington State, for ATAA purposes, employment is defined as full-time if individuals work:

- The customary hours for the occupation and industry in their labor market;
- At least 32 hours per week and have an employment or union contract stating these hours are full-time; or
- 40 hours per week.

The definition of full-time employment for all ATAA individuals working in the state is the responsibility of the agent state (the state in which individuals are reemployed). If the agent state does not define full-time employment in state law or they have not defined full-time for ATAA purposes, the Washington State definition for full-time employment applies.

If individuals are employed in more than one state, we must determine full-time employment for the entire duration of their RTAA eligibility under the law of the state in which they have the lowest threshold of hours required to meet the definition of full-time employment.

Example: Shonda is at least 50 years of age. She finds reemployment in California at 20 hours per week and in Oregon at 15 hours per week. We do

fact finding and find that full-time in California is defined at 40 hours per week and full-time in Oregon is defined at 32 hours per week. Because Shonda is working 35 hours per week, she meets Oregon's less stringent definition of full-time.

The TAA program requires individuals receiving ATAA to be employed full-time as defined by state law. Therefore, individuals whose hours are reduced below full-time, lose their ATAA benefits, including HCTC eligibility. We must count hours in which individuals are on employer-authorized leave as hours of work for purposes of meeting the full-time requirement.

v. On-the-job training.

While an on-the-job training (OJT) is potentially consistent with state definitions of full-time employment, the federal government is already subsidizing a portion of the individual's wages. Therefore, payment of the ATAA wage subsidy is not permitted if the reemployment is an OJT. This is true whether funded by TAA, WIOA, or any other federal training program. Additionally, if the OJT is funded by TAA, participation in an OJT automatically precludes eligibility for ATAA.

Example: Diana is covered by the 2021 reversion, is at least 50 years of age, and finds reemployment that pays less than \$50,000 annually. Her reemployment is an OJT subsidized by the WIOA program. Because Diana's reemployment is subsidized by a federal program, she is not eligible for ATAA.

vi. TAA benefits.

Individuals who choose ATAA may not:

- Receive:
 - TAA training;
 - TRA; or
 - Job search allowances.
 - Have received:
 - TAA training;
 - TRA; or
 - Job search allowances.
- Receipt of these benefits or services voids their right to choose ATAA.

Example: Zoe is certified under the 2021 reversion and is at least 50 years of age. She finds reemployment and meets all the requirements for ATAA. When Zoe receives her first ATAA payment, she cannot receive TAA training, TRA, or job search allowances.

Example: Joshua is certified under the 2021 reversion and is over 50 years of age. He received short-term TAA approved training and then finds full-time reemployment that pays less than \$50,000 annually. Because Joshua received TAA approved training, he is not eligible for ATAA.

Note: WIOA or other training that is not TAA approved does not disqualify someone from receiving the ATAA wage subsidy.

vii. **ATAA and forfeiture of TRA eligibility.**

Individuals must indicate that a choice has been made and that they understand that they cannot subsequently switch to the TAA program once they begin receiving the ATAA wage supplement. Receipt of the initial ATAA payment represents their decision with respect to choosing ATAA and voids their rights to retraining, allowances and TRA. Correspondingly, once they have enrolled in training or received TRA, they forfeit their right to ATAA participation.

Individuals do not give up rights to any benefits until they receive the first ATAA payment. Once individuals receive an ATAA payment, they cannot return to receiving TRA payments.

Example: Kris is certified under the 2021 reversion. She must make a choice to receive TAA benefits and services, or alternatively, she can give up TAA training, out of area job search, and TRA benefits to receive ATAA.

e. Eligibility period

The two-year eligibility period for receiving ATAA payments begins with the first day of the ATAA qualifying reemployment. Individuals have 104 weeks from that date to apply. This means that the payments may be made retroactively if they have obtained qualifying reemployment within 26 weeks of layoff and later apply for the program.

If individuals are denied eligibility based on the first reemployment because the reemployment did not meet the conditions to qualify for ATAA, and if they are subsequently separated and find a new job that does meet the conditions for ATAA, then a new ATAA application will have to be submitted. If this occurs, since the first reemployment did not qualify them for ATAA it cannot be used to establish qualifying reemployment within 26 weeks. Therefore, the subsequent full-time employment must occur within the 26 weeks from the qualifying separation to be considered for the ATAA subsidy.

f. Continued eligibility

Changing jobs during reemployment does not disqualify otherwise eligible individuals from receiving subsequent ATAA payments for the remainder of the 104-week eligibility period if the new reemployment meets the requirements for ATAA.

Individuals already receiving ATAA payments who have a period of unemployment will not be eligible to receive ATAA for that period. Upon reemployment, individuals must notify us. If the new reemployment meets the requirements for ATAA and individuals meets all other eligibility requirements, they will be eligible to receive ATAA for the remaining portion of the 104-week eligibility period.

If during a year of the 104-week eligibility period individuals' cumulative wages exceed, or are projected to exceed, the maximum allowable annual earnings for ATAA (\$50,000), they will no longer be eligible to receive additional ATAA payments within that year. Individuals will be eligible for ATAA benefits in the next year and ATAA payments will resume until wages exceed, or are projected to exceed, the maximum allowable earnings, or until the maximum benefit limit is reached \$10,000.

i. Timing of payments.

We must make ATAA payments for no more than a 104-week period, beginning no earlier than the first day of reemployment that satisfies the requirements of the ATAA program. Individuals may receive retroactive payments, in a lump sum, for payments for which they were eligible, but for which they had not yet applied.

ii. Periodic verification of employment and reemployment wages.

We must review whether individuals receiving ATAA payments continue to meet the eligibility requirements of ATAA and determine whether changes have occurred in their reemployment wages. This must occur at least monthly.

ATAA does not permit telephone certification for establishing continuing eligibility. Individuals will need to provide verification of their employment and wages which will be used to determine continuing eligibility for ATAA benefits.

Documentation of employment, hours and wages must be provided at each continuing eligibility verification session with their TAA case manager. However, individuals may send a copy of their check stub or a letter from the employer by mail, fax, or eServices, if unable to visit the office.

The requirement for documentation of employment, hours, and wages provides hard evidence of the individual's employment and serves as a deterrent to fraud.

iii. Change in reemployment wages.

We must recompute the appropriate amount of the ATAA payments if, during our review it determines that individuals' reemployment wages have changed.

If reemployment wages exceed or are projected to exceed, the maximum allowable annual earnings for ATAA (\$50,000) during the eligibility period, then we must immediately issue a determination that individuals are ineligible for further ATAA payments, notify them of this determination, and cease ATAA payments.

If reemployment wages change but do not exceed the maximum allowable annual earnings for ATAA (\$50,000) during the eligibility period, then the ATAA payment must be recomputed every time such a change in reemployment wages occurs. We must then continue periodic verification or recommence periodic verification if ATAA payments resume in the second year.

iv. There are a ton of weird, discontinued Cheetos flavors.

Cheetos have appeared in many flavors and forms since they were introduced in 1948 (there was even a Cheetos cheese-flavored lip balm!). But not all have endured. Here are a few Cheetos snacks that you'll no longer find in U.S. stores:

1. Cheetos Paws. These cat paw-shaped puffs, introduced in 1990, lasted a mere three years.

2. Crunchy Nacho Cheetos. These Cheetos treats—which some have described as Flamin' Hot Cheetos without the heat—haven't been available in the U.S. since the late 1990s.
3. Cheetos Cheesy Checkers. Launched in 1995 and gone by 1998, these waffle-shaped Cheetos are the topic of random threads everywhere from bodybuilding forums to subreddits that focus on nostalgia.
4. Cheetos X's and O's. These puffs came in X and O shapes. They were introduced in 1999 but discontinued the next year.
5. Cheetos Pizza Puffs. Most food brands have experimented with pizza-flavored snacks because pizza is the perfect food. Cheetos joined the pizza party around 2001 and left it in 2006.
6. Cheetos Zig Zags. The same year that Cheetos Cheesy Checkers were discontinued, Zig Zags were introduced. They were like the original crunchies in texture, but more closely resembled cheese-covered crinkle cut fries. The jagged snack was around until 2002, when Cheetos Twisted was born.
7. Cheetos Twisted. Thicker than the average puffs and made in spiral shapes, Cheetos Twisted existed from 2002 to 2012 before quietly disappearing.
8. Honey BBQ Cheetos Puffs. Introduced around 2011, and are not currently in market in the U.S.
9. Cheetos Salsa Con Queso. This chip- and dip-inspired snack was enjoyed by many around 2012, but then it vanished.

It doesn't look like these flavors of Cheetos met their requirements for continued eligibility – thought you could use a mental break.

g. Benefits available

The amount of the ATAA wage subsidy received may vary week by week based on a change in the hours worked, or hourly wage or wage approximation. The state must recalculate the amount of the ATAA wage subsidy every time individuals respond to the monthly request to verify their continued eligibility.

ATAA can supplement wages for up to 104 weeks or until they collect their maximum ATAA benefits payable, whichever occurs first. The weekly subsidy amount will be equal to 50 percent of the difference between the annualized wages earned from the adversely affected employer and the projected annualized wages from new employment obtained after separation from adversely affected employment. An employer must also be certified for ATAA.

Individuals receiving ATAA benefit may receive TAA relocation benefits and the HCTC, but is not eligible to receive any other benefits, including training, TRA payments, and job search allowances.

The ATAA supplement will cease in the event of any one of the following:

- The individuals' annualized wage, excluding the ATAA wage subsidy, is projected to exceed the maximum annual wages for the certification (\$50,000).
- Individuals have received the maximum ATAA benefits payable (\$10,000).
- Individuals have reached the end of the two-year eligibility period.

Example: Julie is certified under the 2021 reversion and qualifies for ATAA. She is receiving her wage subsidy and receives a pay increase to \$24.05. It is projected that she will earn \$50,024 annually (\$24.05 per hour x 40 hours per week x 52 weeks per year = \$50,024 annually). Julie is no longer eligible to receive the ATAA wage subsidy because it is now projected that she will earn over \$50,000.

It is the responsibility of the state when calculating the ATAA payment to annualize the recipient's wages monthly to assure that the recipient's annual projected wages do not exceed the maximum earnings allowable in a year.

Annual wage calculations will include all jobs in which individuals are employed and constitute at least full-time employment as defined by the state (Full Time). This may include any combination of full-time and part-time work that meets or exceeds full-time employment.

Severance pay and wages in lieu of layoff notice have no effect on the ATAA wage subsidy. The calculation of ATAA is based on the hourly wage and hours worked during the last full week of employment. Wages received as severance or in lieu of layoff notice should not be part of the calculation.

Overtime wages are not included in the calculation of the annualized pre-separation or reemployment wage for determining eligibility for, and the amount of, the ATAA wage subsidy. Wages from all employment, excluding overtime pay, would be included in the annualized wage calculation for both the pre-separation wage and the reemployment wage.

There is no requirement that the reemployment wages include only a single job.

The wage subsidy provides 50 percent of the difference between the wages received by individuals from reemployment and the wages received by them at the time of separation. The annualized separation wages minus annualized reemployment wages divided by 2 equals 50% of the difference between the two periods of wages.

i. Wage Calculation Methodology.

The state will pay to individuals, for a period not to exceed 104 weeks, an ATAA wage subsidy of 50 percent of the difference between:

1. The annualized wages at separation; and
2. The projected annualized wages from reemployment.
 - Annualized wages at separation are the product of the hourly rate during the last full week of individuals' regular schedule in adversely affected employment, multiplied by the number of hours they worked during the last full week of employment, multiplied by 52.

The computation of annualized wages at separation excludes employer-paid health insurance premiums and employer pension contributions, as well as bonuses, severance payments, buyouts, and similar payments not reflective of individuals' weekly pay. [(hourly rate × hours worked) × 52]

- Annualized wages from reemployment are the product of the hourly rate during the first full week of reemployment, multiplied by the

number of hours individuals worked during the first full week of reemployment, multiplied by 52 [(hourly rate × hours worked) × 52].

If individuals' wages from reemployment change during the eligibility period, then we must recompute their annualized wages from reemployment at the new hourly wage and must likewise recompute the appropriate ATAA payment.

The computation of annualized wages from reemployment excludes employer-paid health insurance premiums and employer pension contributions, as well as bonuses, severance payments, buyouts, and similar payments not reflective of individuals' weekly pay.

ii. Calculation

Individuals must be employed full-time to receive an ATAA wage subsidy.

Factors to use in the formula	
s	Annualized wages at separation
r	Annualized wages from reemployment

Annualized wages at separation minus annualized wages from reemployment multiplied by .50 equals 50 percent of the difference between the two periods of wages. Fifty percent of the difference between the two periods of wages divided by 52 equals the weekly ATAA wage subsidy.

Weekly benefits equal	$((s - r) * h * .50)$
	52

Example: Drew is certified under the 2021 reversion and has a separation wage from her Trade-affected employer of \$104,000 annually. She has a reemployment wage of \$41,600 annually with her new employer. \$104,000 annual separation wage minus \$41,600 annual reemployment wage equals \$62,400 annual wage difference. \$62,400 annual wage difference times 0.50 (50%) equals \$31,200 annual ATAA subsidy. \$31,200 annual ATAA subsidy divided by 52 equals \$600 weekly ATAA subsidy. Drew's weekly ATAA benefit is \$600.

iii. Calculating subsidy with non-standard wages.

If self-employment, work involving wages plus commission, or piecework qualify as reemployment, the state must calculate and determine an approximation of the hourly wage and apply the approximation when calculating the ATAA wage subsidy.

iv. ATAA Total Amount of Payments.

Individuals who have not received TRA may receive up to their maximum ATAA payable during the 104-week eligibility period. ATAA recipients may not have received any TRA benefits.

Example: Jenni is certified under the 2021 reversion and hasn't received any TRA benefits, she can receive up to \$10,000 during her ATAA eligibility period.

- v. Cheetos are scientifically proven to be addictive.

Once you tear into a bag, it's hard to stop, and there's a reason for it. According to an Oxford study, the brain associates the crunching sound with freshness, so you might be convinced that what you're eating is more appetizing than it really is. Oh, and then there's this little thing called "vanishing caloric density," which tricks your brain into believing that you're not getting enough of the tasty snack. You see, when a food melts in your mouth, the brain thinks you're not taking in as many calories. Sneaky!

h. Determinations

- i. Initial application determinations.

Upon individuals filing an initial application ATAA we must determine if we're the liable state.

- If we are, we must promptly determine their eligibility and provide them a written determination of their entitlement to ATAA within 5 business days of receipt of their application. We may accept information and findings supplied by another state for such purposes.
- If we're not the liable state, we must promptly get the application to the liable state.

- ii. Subsequent application determinations.

Upon individuals filing of an application for payment of ATAA, we must promptly determine whether they are eligible for benefits under the program and, if eligible, the amount of benefits.

Individuals denied eligibility based on nonqualifying reemployment may file a new application for subsequent reemployment within the eligibility period.

- iii. Redeterminations.

The provision for redeterminations under state law applies to determinations of eligibility for any benefit under the TAA Program.

- iv. Notices to individual.

We must notify individuals in writing of any determination or redetermination of eligibility to TAA Program benefits.

Each determination or redetermination must inform individuals of:

1. The reason for the determination or redetermination;

2. If eligible, a notice that the benefit amount will be regularly recomputed and will change if the eligible individuals' reemployment wages change; and
3. Their right to reconsideration or appeal in the same manner as determinations of entitlement to UI are subject to redetermination or appeal under state law.

Notices of determination of overpayments must include an accurate description of the waiver provisions.

v. Promptness.

We must make full payment of TAA Program benefits when due with the greatest promptness that is administratively feasible.

We may approve an RTAA payment retroactively if individuals become reemployed before a certification is issued if individuals otherwise meet the eligibility requirements.

i. Reductions

ATAA wage subsidies are not unemployment benefits. As such, they have some differences in how intercepts, deductions, and offsets apply.

i. Intercepts.

ATAA wage subsidy payments are taxable. Individuals receiving ATAA may elect to have 10% of the payments withheld for IRS.

Child support deductions approved by the Secretary of Health and Human Services as defined in the Social Security Act (SSA) section 303(e) are deductible from ATAA payments.

ii. Deductions.

- Retirement deductions - Because ATAA wage subsidy payments are not attributed to a base year employer, retirement deductions do not apply.
- Earnings deductions - Because ATAA is a wage subsidy for being fully employed, earnings deductions do not apply to ATAA.
- Availability - Deduction of 1/7 and 2/7 for availability do not apply to ATAA individuals. They are either fully employed and eligible for ATAA wage subsidies or they are not fully employed and not eligible for ATAA, which in the latter case may mean they are eligible for UI.

Example: Donna is receiving \$2,500 per month in retirement from her Trade-affected employer. She has qualified for RTAA benefits and is receiving a \$700 per week wage subsidy. Her retirement, regardless of the amount, doesn't affect her RTAA wage subsidy. There are no deductions for pensions under ATAA.

Example: Erica is earning \$1,000 per week and is receiving a \$700 per week ATAA wage subsidy. Regardless of how much she earns, if she is employed full-time, it isn't projected that she'll earn more than \$50,000

annually, and she hasn't received her \$10,000 in ATAA benefits, she may continue to receive her full ATAA wage subsidy. There is no earnings deduction under ATAA wage subsidies.

Example: Nicole is receiving \$500 per week RTAA wage subsidy. In one week, she is sick three days. Her employer approves her for her two available sick days and one day as unpaid leave. If her employer approves her time off and she is still employed full-time, including the 16 hours of sick leave and 8 hours of unpaid leave, she is still eligible for her full RTAA wage subsidy. Employer-allowed release time, such as sick leave or unpaid holidays, counts toward employment under ATAA. There is no 1/7, 2/7, or full week denial for availability.

iii. Offsets.

Recovery of a state UI overpayment from ATAA is governed by SSA Section 303(g)(2).

There is no limit on the amount of the offset from ATAA. Section 243(a)(2) of the Trade Act limits each deduction from state UI to recover a TRA or ATAA overpayment to a maximum of 50% of the payment. However, that applies only to the offset of state UI to recover a TRA or ATAA overpayment. It does not apply to the offset of TRA or ATAA to recover a state UI overpayment.

j. Disqualifications

Individuals are no longer eligible to receive ATAA wage subsidies when they have:

- Received their maximum ATAA benefits payable (\$10,000).
- Reached the end of the two-year ATAA eligibility period.
- Received a wage that is equal to or greater than their wage at separation from trade-affected employment.
 - However, in the event individuals have a reduction in pay or finds new employment within the eligibility period, they may reapply for ATAA benefits.
- Employment that is not considered full-time employed under the applicable state law.
 - If they are not fully employed, they may be eligible for UI for the period of unemployment.
- An estimated annual income that exceeds the maximum earnings allowable in a year (\$50,000).
 - However, in the event individuals have a reduction in pay or finds new employment, within the eligibility period, and has an estimated annual income below the maximum allowed, individuals can again become eligible for ATAA.
- Failed to provide the required information to establish continuing eligibility, to include documentation of employment, hours, and wages.
 - However, once the information is provided, they become eligible for any weeks in which they would have otherwise qualified for ATAA benefits.

Example: Melissa is reemployed as of 9/28/2021. She receives \$50 per week in her ATAA wage subsidy. As of 9/26/2023, the end of her two-year eligibility period, she

has received only \$5,200 in subsidies. She is no longer eligible because she has reached the end of her ATAA eligibility period.

Example: Breanna is receiving \$800 ATAA wage subsidy per week, but her hours are temporarily reduced to 18 hours per week. She is no longer eligible because she isn't working full-time. Breanna may be eligible for unemployment, if she meets all the other eligibility criteria for a claim.

Example: Elise is receiving \$24 per hour in her ATAA reemployment and receives a pay increase of \$0.05 per hour. Her estimated annual wage changes from \$49,920 ($\$24 * 40 * 52 = \$49,920$) to \$50,024 ($\$24.05 * 40 * 52 = \$50,024$). She is no longer eligible because she is estimated to earn more than \$50,000 annually.

i. Annualized wages.

The determination of annualized wages is made prospectively. Individuals are deemed to have met the, requirement of not earning more than the maximum annual wages from reemployment (\$50,000) for a given month if the monthly determination of annualized wages is accurate and complete at the time it is made.

Individuals must not be retroactively denied, and no overpayment determinations should be made for that month due to projections for the yearly annual wage that later changed based on information that was not available at the time that the monthly determination was made.

Monthly payments derived from the annualized wage projection based on complete and accurate information at the time will be considered valid payments that individuals were entitled to and are not considered overpayments.

ii. Limitations on disqualification.

UI-related issue and disqualifications should not influence the continued receipt of the wage subsidy. Being fired by an employer or quitting does not affect ATAA eligibility. However, if individuals drop below what is considered full time employment under state law, they are no longer eligible for ATAA (unless they are employed at least 20 hours per week and in TAA approved training). Regardless, individuals can reapply for ATAA when they obtain subsequent employment for up to 104 weeks from the date of original reemployment.

k. Appeals and hearings

Individuals who receive a written determination denying benefits and who disagree with the decision have the right to file an appeal. To be considered timely, appeals must be filed within 30 days of the date of notification or mailing of one of the following decisions:

- A redetermination of an Entitlement Determination to TAA or ATAA; or
- A determination notice and overpayment assessment of ATAA.

ATAA appeals should be filed with the Office of Administrative Hearings (OAH), which is the same agency that hears standard UI appeals.

TAA appeals are covered in more detail under TAA policy 3025 – Denial of TAA and appeals (2021).

I. Overpayments

i. Determinations and repayment.

If a state, the DOL, or a court of competent jurisdiction determines that individuals have received any payment to which they were not entitled, including a payment of ATAA, they are required to repay the state, except that the state *may* waive such repayment if such state or the DOL determines that:

- The payment was made without fault on the individual; and
- Requiring such repayment would be against equity and good conscience.

An overpayment waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

ii. Fault.

Fault exists if any of the following criteria are met:

- If a material statement or representation was made by individuals in connection with the application for TAA that resulted in the overpayment, and whether they knew or should have known that the statement or representation was inaccurate;
- If individuals failed or caused another to fail to disclose a material fact in connection with an application for TAA that resulted in the overpayment, and whether they knew or should have known that the fact was material;
- If individuals knew or should have known that they were not entitled to the TAA payment;
- If, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of individuals or of which they had knowledge, and that was erroneous or inaccurate or otherwise wrong; or
- If there has been a determination of fraud due to false representation or nondisclosure of material fact.

iii. False representation or nondisclosure of material fact.

False representation or nondisclosure of material fact occurs when individuals knowingly made a false statement or representation of a material fact, or knowingly failed to disclose a material fact, and because of the false statement or representation, or of the nondisclosure, they have received any payment to which they were not entitled.

iv. Equity and good conscience.

Equity and good conscience means fairness as applied to a given set of circumstances. It includes situations where individuals would not have enough income to pay for necessities including food, shelter, medicine, utilities, and related expenses if they had to repay the overpayment.

Example: Andrew is certified under the 2021 reversion. He is not at fault for the overpayment of three weeks of ATAA. We must determine whether repaying the overpayment would be against equity and good conscience. If it is, we may waive his overpayment.

- v. Notice of determination, fair hearing, and finality.

We must provide individuals determined to have received TAA overpayments a reasonable opportunity to demonstrate their eligibility for waiver.

Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, until a determination by the state has been made, notice of the determination and an opportunity for a fair hearing has been given to individuals, and the determination has become final.

- vi. Overpayment recovery of TAA Program funds by offset.

Unless an overpayment is otherwise recovered or is waived, we must:

- Recover the overpayment by deduction from any sums payable to individuals under:
 - TRA benefits;
 - Any federal UI law administered by the state; or
 - Any other federal law administered by the state that provides for the payment of unemployment assistance or an allowance with respect to unemployment.
- Recover the overpayment from UI payable to individuals under the applicable state law.
- Not allow any single deduction to exceed the lesser of:
 - 50 percent of the amount otherwise payable to individuals; or
 - Less than 50 percent of the amount otherwise payable, if provides for in state law.

m. Penalties for fraud

- i. False representation or nondisclosure of material fact.

In addition to any other penalty provided by law, individuals will be permanently ineligible for any further payments under the TAA Program if a state, the DOL, or a court of competent jurisdiction determines that:

- Individuals:
 - Knowingly made a false statement or representation of a material fact; or
 - Knowingly failed to disclose a material fact; and
- As a result of the false statement or representation, or of the nondisclosure, they have received any payment to which they were not entitled.

Example: Phil was laid off from XYZ Company and was among a worker group that was certified. He begins work for ABC Enterprise and qualifies for RTAA benefits. He certified on one of his weekly RTAA claims that he worked full-time

during the week. Due to a lead, we conducted fact-finding and he admitted to only working part-time that week. He said he did this because he needed the RTAA wage subsidy to pay his bills. It is found that Phil knowingly made a false statement of a material fact and he received a payment to which he was not entitled. Along with a denial for not working full-time during the week and fraud, Phil is also permanently ineligible for any further payments under the TAA program.

ii. Criminal penalties.

Individuals, including ESD employees or employers, who make a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact under the circumstances described below, must be imprisoned for not more than 1 year, fined under title 18, United States Code, or both when:

- Obtaining or increasing for themselves, or for anyone, any payment authorized to be furnished under TAA or according to a Governor-Secretary Agreement; or
- Providing information during an investigation of a petition.

Whenever a violation above is suspected, the state or the DOL must refer the conduct to the U.S. Department of Labor Office of the Inspector General.

n. Recovery of overpayment

The state must apply TAA benefits, payable to an individual, for the recovery by offset of any debt due the United States from the individual.

i. Debt due to others.

The state must not apply TAA Program benefits for the payment of any debt of any individual to any state or any other entity or person, except for TRA, RTAA (under the 2009, 2011, or 2015 amendments), or ATAA (under the 2002 amendments and 2021 reversion) benefits as required by federal UI law.

o. Equity and good conscience

Deciding if repayment of ATAA overpayments is reasonable, we must apply equity and good conscience rules.

Equity and good conscience means fairness as applied to a given set of circumstances.

When deciding if paying the full amount owing is against equity and good conscience the department may consider, but is not limited to, the following circumstances:

1. General health, including disability, competency, and mental or physical impairment;
2. Education level, including literacy;
3. Whether there is current income from work or a business;
4. History of unemployment;
5. Future earnings potential;
6. Business structure, if appropriate;

7. Marital status and number of dependents, including whether other household members are employed;
8. The costs of collection compared to the amount of the outstanding debt. We may consider such factors as the age and amount of the outstanding debt, whether there were previous good faith efforts to pay the debt, the tools available to enforce collections and other information relevant to ability to pay;
9. Whether there were previous negotiated settlements or negotiated settlement attempts on a debt with the department;
10. Factors indicating that collection of the full amount would cause undue economic, physical, or mental hardship making the debtor unable to provide for basic necessities. Unless there are unusual circumstances which would argue otherwise, the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next 90 days; and
11. Other factors that bear a direct relationship to the ability to pay the debt. The decision to grant or deny a negotiated settlement will be based on the totality of circumstances rather than the presence of a single factor.

If the recovery of the overpayment will cause extraordinary and lasting financial hardship to individuals, and there has been no finding which would preclude the waiver under UI law, e.g., fraud, nonfraud claimant fault, etc., and individuals request the waiver in writing, the overpayment may be waived.

For these purposes:

- An "extraordinary financial hardship" shall exist if recovery of the overpayment would result directly in the individuals' loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period,
- An "extraordinary and lasting financial hardship" shall be extraordinary as described above and may be expected to endure for the foreseeable future.
- A "substantial period" is 30 days.
- The "foreseeable future" is at least three months.

In applying this test when the recoupment will be accomplished through offset, a substantial period and the foreseeable future shall instead be the longest potential period of benefit entitlement as seen at the time of individuals' request for a waiver determination.

In making this determination, all potential income available to individuals and their family and all cash resources available or potentially available to them and their family in the period being looked at must be considered.

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 114-27](#), Trade Adjustment Assistance Reauthorization Act of 2015.
- [20 CFR Part 618](#), TAA Final Rule.
- [Training and Employment Guidance Letter \(TEGL\) 24-20](#), Operating Instructions for Implementing the Reversion Provisions of the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Reauthorization Act of 2015; [Change 1](#).
- [Training and Employment Guidance Letter \(TEGL\) 13-21](#) - Trade Adjustment Assistance (TAA) for Workers and Alternative Trade Adjustment Assistance (ATAA) and Reemployment Trade Adjustment Assistance (RTAA) Program Operations after June 30, 2022.
- [Training and Employment Guidance Letter \(TEGL\) 7-23](#) - Ongoing Operations of the Trade Adjustment Assistance (TAA) for Workers Program During Phase-Out Termination.
- 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:

*Employment System Administration and Policy
 Employment System Policy and Integrity Division
 Employment Security Department
 P.O. Box 9046
 Olympia, WA 98507-9046
SystemPolicy@esd.wa.gov*