

# WorkSource Information Notice (WIN)

Employment System Administration and Policy

Policy-related |  Fiscal |  Performance |  Q&A |  Other

Number: WIN 0079, Change 1

Date: January 31, 2017

Expiration Date: TBD

**TO:** Workforce Development System Partners  
**FROM:** Gary Kamimura, Workforce Policy Director  
**SUBJECT:** Changes to Trade Adjustment Assistance (TAA) Policies

## Purpose:

To provide notice to Trade Adjustment Assistance (TAA) supervisors and counselors of changes that need to be implemented immediately and maintained until associated state TAA policies are formally revised and reissued.

## Action Required:

Employment Security Regional Directors and WorkSource Administrators must distribute this guidance to TAA supervisors and counselors specifically and to WorkSource system partners more broadly to ensure that all are familiar with its content and requirements.

TAA supervisors and counselors must promptly comply with this guidance until such time as it is superseded or affirmed by formally revised and reissued TAA policies.

## Content:

### **Relocation Allowances**

Use federal General Services Administration (GSA) per diem calculations, which can be found [here](#). Do not use state Office of Financial Management (OFM) per diem calculations.

To that end, per 20 CFR 617.42(2), the cost allowable for lodging and meals is the **lesser** of the actual cost to the individual for lodging and meals while in travel status or 50 percent of the prevailing federal per diem allowance rate for the locality to which the relocation is made.

2002, 2011, 2014 and 2015 Programs: This monetary benefit is available to reimburse participants for approved expenses when they must move to a new area to earn family-sustaining wages in employment outside of their normal commuting areas. Relocation allowances may include 90% of the reasonable and necessary expenses involved in moving participants, their families, and their

household goods to a new area following re-employment outside of their normal commuting area. In addition, they may receive a lump sum payment equal to three times their average weekly wage, up to a maximum payment of \$1,250. They must submit an application for relocation allowances before their relocation begins and within 425 days of their layoff or certification (whichever is later) or within 182 days of the conclusion of training.

2009 Program: This monetary benefit is available to reimburse participants for approved expenses when they must move to a new area to earn family-sustaining wages in employment outside of their normal commuting area. Relocation allowances may include 100% of the reasonable and necessary expenses involved in moving participants, their families, and their household goods to a new area following their re-employment outside of their normal commuting area. In addition, they may receive a lump sum payment equal to three times their average weekly wage, up to a maximum payment of \$1,500. They must submit an application for a relocation allowance before their relocation begins and within 425 days of their layoff or certification (whichever is later) or within 182 days of the conclusion of training.

### **Health Coverage Tax Credit (HCTC)**

ESD launched a new unemployment insurance benefit payment system in January 2017 that will electronically notify the Internal Revenue Service (IRS) of potentially eligible participants from that month forward. Employment System Policy is developing a policy for the reinstated program.

*How are individuals made aware of the program and potential eligibility?*

The IRS conducted an outreach effort to inform individuals about HCTC and posted program information on its website. In addition, TAA staff will advise individuals about the program.

*Who determines eligibility?*

Only the IRS can determine an individual's eligibility.

*Who is eligible?*

Eligible TAA Recipients:

- Individuals who received Trade Readjustment Allowance (TRA) for any day of the reference month.
- Individuals who would have been eligible to receive TRA in the reference month except for not having exhausted their unemployment compensation entitlement.

Eligible ATAA/RTAA Recipients:

- Individuals who participated in the Alternative Trade Adjustment Assistance (ATAA) or Reemployment Trade Adjustment Assistance (RTAA) programs in the reference month and received a payment in that month (equal to 50 percent of the difference between their wages at the time of separation and the time of reemployment).
- Individuals whose ATAA or RTAA program eligibility lapsed in the prior calendar month.

## Special Rule Recipients:

- Individuals who are in a break exceeding 30 days while in approved training where the break exists within the eligibility period for receiving TRA.
- Individuals receiving unemployment compensation in the reference month and who would have been eligible to receive TRA in that month except for not having exhausted their unemployment compensation entitlement despite not yet being enrolled in training.

Eligible recipients for calendar year 2014, 2015, and 2016 must apply. The IRS requested states provide documentation as proof of eligibility.

## *Documentation*

The IRS requires that the state provide proof of eligible TAA or ATAA/RTAA recipient status for 2014 and 2015, separately for each tax year. The documentation must only confirm that the individual received a payment for any one week in any one month during the calendar year.

These links will provide references for HCTC:

- [Training and Employment Notice \(TEN\) 25-15](#) and [Unemployment Insurance Program Letter \(UIPL\) 1-17](#)
- Department of Labor's (DOL), [Questions & Answers](#)
- [IRS](#) information page

What do you do if a recipient requests documentation? Employment System Policy is working with Employment Connections on the procedures for generating a written document when it is requested. Employment Connections has also developed a slide presentation to orient staff to HCTC as well as a one-page HCTC flyer for staff to hand out to TAA participants.

## **Denial of Trade Adjustment Assistance**

Denials of TAA training, out of area job search, and relocation will be communicated to participants, in writing, by TAA counselors in consultation with TAA supervisors and WorkSource Administrators.

Individuals have a right to appeal TAA determinations that result in denials within 30 days of receiving such notification. Appeals of denials are to be forwarded to the state Office of Administrative Hearings (OAH) at the following address to be handled by an administrative law judge:

Office of Administrative Hearings  
16201 East Indiana Avenue, Suite 500  
Spokane Valley WA 99216

Phone: (509) 456-3975 or (800) 366-0955

Staff must include with the appeal request all documentation (see [Attachment A](#)) necessary to support the denial decision.

## **Classroom (Occupational Skills) Training / Approval of Training / Reasonable Cost of Training**

When considering these policies, Classroom (Occupational Skills) Training, Approval of Training, and Reasonable Cost of training:

The cap on classroom training costs and the Exception to Cost Limit policy requirement, for TAA counselors to obtain central office approval to go above the cap is eliminated. Local discretion will apply. There is no restriction or cap for personal computer and equipment required in the course syllabus for an approved program. Approved training must be within reasonable costs and are dependent upon funds available.

Subsistence and transportation allowances must be calculated using federal per diem rates, not state per diem rates.

Most importantly, when it comes to approval of TAA training, the following six criteria found at 20 CFR 627.22 and state TAA Policy 3045 must be satisfied and TAA counselors must ensure that all assessments have been completed and that participant case files thoroughly and accurately document the following:

1. No suitable employment available (i.e., jobs that pay at least 80 percent of pre-dislocation average weekly wages)
2. Participant will benefit from training
3. Reasonable expectation of employment following completion of training
4. Training is reasonably available and accessible (if outside of their present labor market area, participants must document to TAA staff satisfaction that they can make the situation work).
5. Participant is qualified to undertake and complete the training
6. Training is suitable and available at a reasonable cost

Paper or electronic documents must respectively be signed by TAA counselors and the original signed document placed in participants' paper files or uploaded into the WorkSource Integrated Technology (WIT) system.

## **Entrepreneurial Training**

Entrepreneurial training programs that support participants' employment goals are permitted for petitions that fall under amendment year 2009 and after.

Section 236(a)(5)(B) of Chapter 2 of Title II of the Trade Act of 1974, as amended in 2009, provides that training programs approved include "any training program provided by a State pursuant to title I of the Workforce Investment Act." Section 134(d)(4)(D)(vi) of the Workforce Investment Act of 1998 and subsequently Section 134(c)(3)(D)(vii) of Workforce Innovation and Opportunity Act of 2014 cite "entrepreneurial training" as an allowable training service for adults and dislocated workers. As such, entrepreneurship training is allowable for TAA participants whose petitions correspond to the Trade Act as amended in 2009, 2014, and 2015.

## **Apprenticeship Training**

Service providers should continue to promote apprenticeship programs to the extent possible under TAA program guidelines. This policy applies to workers determined eligible to receive services and allowances under the Trade Act. Employment System Policy will be reviewing and updating the existing policy.

## **Assessment**

A comprehensive assessment is required using WOWI while CASAS remains the tool for assessing basic skills levels and deficiencies. Employment System Policy will be reviewing and updating this policy.

## **Complaint Process**

Employment System Policy will be reviewing and updating the system complaint policy that covers, among other programs, TAA. For now, consistent with the desire to resolve all complaints at the lowest level possible, initial attempts to resolve TAA complaints must be made by locally by TAA supervisors in consultation with their WorkSource Administrators and TAA operational leads within 15 days of receiving the complaint ([WorkSource System Policy 1012 – Customer Concern and Complaint Resolution](#)).

If complainants are dissatisfied with resolutions and wish to appeal, those appeals are to be forwarded to the state Office of Administrative Hearings (OAH) at the following address to be handled by an administrative law judge:

Office of Administrative Hearings  
16201 East Indiana Avenue, Suite 500  
Spokane Valley WA 99216

Phone: (509) 456-3975 or (800) 366-0955

## **Eligible Training Provider List (ETPL)**

Prior policy required training providers to be on the state's ETPL for the TAA training plan to be approved. It is recommended, but not required, that providers be on the ETPL. Providers on the ETPL offering comparable training within a local area should be given strong consideration over providers not on the ETPL. This applies to all petition years.

That said, other programs (e.g., Training Benefits) require training programs to be on the ETPL as a condition of eligibility. It is essential that all TAA counselors advise participants that co-enrollment with other programs may be adversely impacted if they choose training programs that are not on the ETPL. TAA counselors must document that participants were advised of and acknowledge this issue if they chose non-ETPL programs using the standard form provided as [Attachment B](#).

In the future, there may be developed a corresponding electronic document that resides as a TAA Forms TouchPoint in the WorkSource Integrated Technology (WIT) system.

## **TAA Education Expense Cap**

A TAA service provider may authorize up to \$40 per term (quarter or semester) for the purchase of incidental classroom supplies above and beyond the cost of training as defined by policy such as paper, pencils, pens, binders, dictionaries, calculators, cartridge ink, and non-edible supplies needed by participants to support classroom training. This list is not exhaustive and should not be factored into the determination of the cost of an approved training program.

## **Trade Readjustment Allowances**

Follow the appropriate [TRA policy](#) for the application year.

## **Denial of Trade Readjustment Allowances**

Because TRA payments are a form of Unemployment Insurance (UI) compensation, TRA uses the existing UI denial and appeal process, so TAA counselors and supervisors are to direct participants who want to appeal denials of TRA benefits to the [on-line](#) instructions. If you have participants who are unable or unwilling to use the on-line resource and want to submit written appeals, direct them to mail or fax the written appeal request to the following:

Claim Center Appeals  
P.O. Box 19018  
Olympia WA 98507-0018

FAX: (800) 301-1795

## **References:**

- Public Law 93-618, Trade Act of 1974, as amended through 2016
- 20 CFR 617 – Trade Adjustment Assistance for Workers Under the Trade Act of 1974

## **Website:**

[http://www.wa.gov/esd/1stop/policies/state\\_guidance.htm](http://www.wa.gov/esd/1stop/policies/state_guidance.htm)

## **Direct Inquiries To:**

*Employment System Administration and Policy Unit  
Employment System Policy Division  
Employment Security Department  
P.O. Box 9046  
Olympia WA 98506-9046  
(360) 902-9666*

## **Attachments:**

- [Attachment A](#) – Appeal Documentation for TAA Denials
- [Attachment B](#) – Impact of Choosing a Non-ETPL Program for TAA

## Attachment A

### Appeal Documentation for TAA Denials

#### Training

##### Requirements for Participating in Training - 20 CFR 617.19-28

1. Approval of Training Request – Denied
2. Statement of why benefit is being denied:
  - a. Allowable Weeks
  - b. Second Training Plan
  - c. Did Not Meet 6 Criteria
  - d. Not participating in training or not making satisfactory progress
3. Supporting documentation for denial (as much as possible):
  - a. Training Weeks Calculator
  - b. Original Training Plan
  - c. Demand/Decline
  - d. School Comparison (location/cost/length)
  - e. Training Research Packet (anything that supports the denial decision)
  - f. Benchmark Tracking
4. TAA state policy supporting denial
5. Consult Employment System Administration and Policy Unit, as needed, to identify CFR and/or TEGs to support denial
6. All case notes and/or e-mails substantiating the facts supporting denial.

#### Out of Area Job Search

##### Job Search Allowances - 20 CFR 617.30-35 Subpart D

1. Statement of situation
2. TAA State Policy, CFR and/or TEGs both number and law supporting denial
3. Out of Area Job Search Allowance Request with reason for denial documented:
  - a) 617.31(b) - Did not apply for Job Search Allowance before the job search began
  - b) 617.31(1) - Did not apply for Job Search Allowances within 365 days of the date of company certification or lay off date whichever was later.
  - c) 617.31(2) - Did not apply for Job Search allowances within 182 days from the completion of Trade Act approved training
  - d) 617.32(2) - Not totally separated from Trade affected employment when job search began.
  - e) 617.32(4) - Can reasonably expect to obtain suitable employment within local area.
  - f) 617.32(c) - Verification of employment interview with employer could not be made.
4. All case notes and/or e-mails substantiating the facts supporting denial.

## Relocation

### Relocation – 20 CFR 617.40-48 Subpart E

- 1) Statement of situation
- 2) TAA State Policy, CFR and/or TEGL both number and law supporting denial
- 3) Relocation Allowance Request with reason for denial documented:
  - a) 617.41(b) - Did not apply for Relocation Allowance before the relocation began
  - b) 617.41(c)(1) - Did not apply for Relocation Allowances within 425 days of the date of company certification or lay off date whichever was later.
  - c) 617.41(c)(2) - Did not apply for Relocation Allowances within 182 days from the completion of Trade Act approved training.
  - d) 617.42(2) - Not totally separated from Trade affected employment when relocation began.
  - e) 617.42(4) - Relocation is within commuting distance or not within the United States.
  - f) 617.42(6) - Can reasonably expect to obtain suitable employment within local area.
  - g) 617.44(4) – Did not obtain a bona fide offer of long term suitable employment within the intended area of relocation.
- 4) All case notes and/or e-mails substantiating the facts supporting denial.



Attachment B

**Impact of Choosing Non-ETPL Programs for Trade Adjustment Assistance (TAA)**

**Participant Information:**

<b>Last Name:</b>	<b>First Name:</b>	<b>Middle Initial:</b>	
<b>Address:</b>	<b>City:</b>	<b>State:</b>	<b>Zip:</b>

**Notice:**

Co-enrollment with other programs can help you while you are in training. Some of those programs require the training program you choose be listed on the state's Eligible Training Provider List (ETPL) as a condition of eligibility. If you choose a provider that is not on the ETPL, your eligibility for those programs will be adversely affected. Examples include Training Benefits (TB) and the WIOA Title I Dislocated Worker Program.

**Participant Statement:**

*I have read and understand the notice above, which a TAA counselor or supervisor has also explained to me. I have had the chance to ask questions and my questions have been answered.*

**PARTICIPANT SIGNATURE**

**DATE**

X

**Staff Statement:**

*I have explained to the individual whose signature appears above the impact of enrolling in a training program that is not on the state's Eligible Training Provider List.*

**STAFF SIGNATURE**

**DATE**

X