EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
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ADVISORY: **TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 10-11, Change 2**

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
AMERICAN JOB CENTER SYSTEM LEADS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS

FROM: JANE OATES
Assistant Secretary

SUBJECT: Change 2 to the Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)

1. **Purpose.** To respond to questions from State Workforce Agencies designated by Governors as "Cooperating State Agencies" (also jointly referred to as "states") that administer the Trade Adjustment Assistance (TAA) Program, as amended by the TAAEA.

2. **References.**
   - Chapter 2 of Title II of the Trade Act of 1974, as amended (19 U.S.C.2271-2323) (Trade Act)
   - Trade Adjustment Assistance Reform Act of 2002, Division A, Title I, Subtitle A of the Trade Act of 2002 (Pub. L. No. 107-210);
   - Trade and Globalization Adjustment Assistance Act of 2009, Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5);
   - Omnibus Trade Act of 2010 (Pub. L. No. 111-344);
   - Trade Adjustment Assistance Extension Act of 2011 (Pub. L. No. 112-40);
   - 20 Code of Federal Regulations (CFR) Part 617;
   - 20 CFR Part 618;
   - 29 CFR Part 90;
   - Training and Employment Guidance Letter (TEGL) No. 11-02, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, and its Changes 1, 2, and 3;

RESCISSIONS None	EXPIRATION DATE Continuing

- TEGL No. 2-03, Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002, and its Changes 1, 2, and 3;
- TEGL No. 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, and its Changes 1 and 2;
- TEGL No. 15-10, Increasing Credential, Degree, and Certificate Attainment by Participants of the Public Workforce System; and
- TEGL No. 10-11, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011 and its Change 1.

3. Guidance. The following questions and answers address issues raised by the states in connection with TEGL No. 10-11, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011.

Changes to Trade Readjustment Allowances (TRA) (Section 233 of the Trade Act)

Q1. Is a training participant required to file an application for Completion TRA?

Answer: Yes, an application must be filed for Completion TRA. Given the complexity of statutory requirements for this benefit, states must establish an application process to document the training participant's eligibility based on the 5 eligibility criteria for Completion TRA. For the complete list of Completion TRA eligibility criteria, see Section C.3 of TEGL No. 10-11.

Q2. When does the 20-week period of eligibility for Completion TRA begin?

Answer: The 20-week period of eligibility for Completion TRA eligibility begins with the first week in which the training participant files a claim for Completion TRA, regardless of when the first payment is received. Note that Completion TRA eligibility does not require a training participant to file a claim for Completion TRA for the first week following either expiration of the eligibility period for Additional TRA, or exhaustion of Additional TRA; filing a claim after either of those first weeks is permitted. See Section C.3.2 of TEGL No. 10-11.

Q3. May the state amend the training participant's training plan to provide for a later 20-week eligibility period for Completion TRA if: (1) training is interrupted after the individual has filed a claim for Completion TRA; and (2) that interruption leads to a training completion date that occurs after the 20-week eligibility period in the approved training plan?

Answer: No. As TEGL 10-11 explains, the 20-week eligibility period to receive up to 13 weeks of Completion TRA allows for the flexibility of a break in training of up to 7 weeks, but no more. In this case, since the amended training completion date is after the 20-week eligibility period in the approved training plan, the individual will no longer be eligible for Completion

TRA. For the complete list of Completion TRA eligibility criteria, see Section C.3 of TEGL No. 10-11.

Q4. May a worker who has not yet filed a claim for Completion TRA still be eligible for Completion TRA if: (1) training is interrupted before the 20-week eligibility period for Completion TRA has begun; and (2) that interruption leads to a training completion date that occurs after the 20-week eligibility period in the approved training plan?

Answer: Yes. If the worker has not yet filed his or her claim for Completion TRA, the eligibility period for Completion TRA has not begun. In that case, the state may amend the worker's training plan to provide for a later training completion date and correspondingly later 20-week eligibility period for Completion TRA.

Training (Section 236 of the Trade Act)

Q5. If a training participant fails to satisfy one or both training benchmarks for the first time, must the state wait for the results of the next scheduled review to determine whether to modify the training plan?

Answer: No. TEGL No. 10-11, Section C.3.1 states that "upon one substandard review of the established benchmarks, the worker will be given a warning, while two substandard reviews must result in a modification to the training plan, or the worker will no longer be eligible for Completion TRA." However, the purpose of training benchmarks is to allow early and ongoing assessment of the performance of a training participant to determine whether the original training plan is a good fit for the individual. Therefore, if a training participant fails a benchmark review for the first time, but that failure is of a magnitude as to make a failure at a later benchmark review likely, then the state should reevaluate the training plan with the training participant, and amend the training plan if necessary to improve the likelihood that the participant will complete the training program.

Q6. For the purposes of Completion TRA eligibility, if a TAA training participant is failing two courses in one benchmark assessment period, does that mean the participant has failed a benchmark review one time or two times?

Answer: One. However, as noted above, any benchmark failure will result in a substandard review. A substandard review that raises the probability of a second substandard review should result in state action to reevaluate the training plan with the training participant and amend the training plan if necessary to improve the likelihood that the participant will complete the training program. In this instance, if the training participant's failure of two courses makes timely completion of training under the training plan unlikely, then the training plan should be amended.

Q7. If a training participant obtains suitable employment (as defined in section 236(e) of the Trade Act) before he or she has completed training, is the state obliged to continue with funding the training as stated in the training plan?

Answer: Yes, if certain conditions are met. TAA training is designed to lead to sustained employment for training participants. The acquisition of industry-recognized credentials forms an important part of that long term reemployment strategy. Therefore, states must provide training for TAA training participants as approved by the state and the individual in the training plan, even if the individual becomes employed in suitable work during that training, provided that: (1) the state determines that training completion serves the long term employment goals of the individual; and (2) the training participant continues to meet benchmarks that were established as part of the training plan, even though the employed training participant will no longer be eligible for TRA.

Q8. If a training participant fails a course once, may the state modify the training plan to allow the individual to retake the course?

Answer: Yes. If a training participant fails a course, the state may give the individual a second chance to pass the course. However, the state should direct case managers to determine first the factors that contributed to the course failure. For example, a course failure could be the result of personal issues, or an inability to complete the specified coursework satisfactorily. Once the contributing factors are identified, the state may decide to allow the training participant to repeat the course in order to complete the training plan, which also may require amending the training plan to include additional assistance (such as tutoring or an elective introductory course) or changing the training goal within the same industry, in order to meet the limitation of only one training per certification as required in 20 CFR Section 617.22(f)(2). However, the amendment cannot result in training that exceeds the maximum duration of training, as explained in TEGL No. 10-11, Section D.2.

Reemployment Trade Adjustment Assistance (RTAA) Provisions (Section 246 of the Trade Act)

Q9. Does the ATAA eligibility requirement that a worker be 50 years of age when ATAA-qualifying employment occurs apply to RTAA eligibility, or may the worker turn 50 during the two-year RTAA eligibility period and become eligible for RTAA at that time?

Answer: Although TEGL No. 2-03 directed that workers must be 50 years of age at the time of ATAA-qualifying employment, and TEGL No. 22-08 provided that this guidance applied to RTAA, DOL has revised its interpretation in TEGL No. 22-08, Change 1 Attachment item no. 41 of when the worker must reach the statutorily-mandated age of 50 for RTAA eligibility for workers applying for RTAA after the date of issuance of this TEGL. Effective on this date, workers who have become employed before they reach the age of 50 may be determined eligible for RTAA when they turn 50 during such employment if they meet all the other RTAA eligibility requirements. In this scenario, the worker's two year eligibility for RTAA will commence at the point of the worker's 50th birthday. Further, if the worker received TRA, each week in which TRA was paid reduces the duration of RTAA eligibility accordingly, as explained in TEGL No. 22-08, Change 1, Section A.
This revised interpretation applies only to RTAA and not to ATAA. A change in the application of the age 50 eligibility requirement for ATAA is not appropriate at this time because ATAA

was authorized as a pilot program to provide a wage subsidy as an alternative TAA benefit for certain certified older workers. When Congress amended the Trade Act in 2009, it ended the pilot and made RTAA a permanent benefit without the reemployment deadline and group certification requirements for ATAA and the requirement that recipients choose to forgo TAA training. The new interpretation of the RTAA age eligibility requirement is consistent with the statutory changes to expand the availability of the wage subsidy to older workers by allowing them to qualify for the benefit when they reach age 50 and the other eligibility requirements have been met. This new interpretation is also consistent with section 288 of the Trade Act, which Congress added in 2009 to provide a statutory basis for the Secretary interpreting the requirements of the TAA program to provide maximum TAA benefits for covered workers.

Therefore, the states should, as stated in 20 CFR 617.50 and 20 CFR 617.51, take appropriate action to apply this interpretation of the age eligibility requirement in all RTAA determinations, redeterminations, and appeals.

Q10. May a worker who is employed full-time and receiving RTAA continue to receive RTAA if the worker's hours are reduced and the worker receives Short-Time Compensation (STC) under a state-approved STC plan?

Answer:
For RTAA eligibility, a worker must either: (1) be "employed on a full-time basis as defined by the law of the State in which the worker is employed" (section 246(a)(3)(B)(iii)(I), Trade Act); or (2) work at least twenty hours a week while in an approved training program (section 246(a)(3)(B)(iii)(II), Trade Act). An STC program (also known as work sharing or shared work program) is a special unemployment program that preserves employees' jobs and employers' trained workforces during disruptions to an employer's regular business activity by reducing hours of work for an entire group of employees rather than laying off some employees while others continue to work full time. The STC benefit is payable under state law (or under an agreement with the Secretary under Section 2163 of the Layoff Prevention Act of 2012) to an employee under a state-approved STC plan, as described in UIPL No. 22-12. As discussed in section H. of UIPL No. 22-12, Change 1, state STC laws may permit payment of STC when a worker's hours are reduced below forty hours a week and there is a reduction in the usual hours of work of at least ten percent but not more than sixty percent (the percentage of reduction for eligibility for an STC benefit may vary from state to state). Therefore, it is possible for a worker to continue to meet the state law definition of "full-time employment" when working reduced hours under an STC plan. If the state full-time definitions is met, a worker may be eligible for STC and RTAA during the same week. Alternatively, if the worker is enrolled in full-time TAA approved training, and works at least 20 hours a week, then the worker might be eligible for RTAA. If those hours are reduced under an STC plan and the worker continues to meet the minimum hours of work requirement for RTAA, then the worker may be eligible for both RTAA and STC. The amounts of those payments would be determined in accordance with the respective program requirements, and RTAA would not be reduced.

4. <u>Action Required</u>. States must inform all appropriate staff of the contents of these instructions. In particular, inform all appropriate staff, including the appellate divisions of the state agency, of the availability of RTAA to workers when they meet the age eligibility

requirement for RTAA to workers when they meet the age eligibility requirements for RTAA (Section 246(a)(3)(N)(i), Trade Act) and have met all the other Section 236 individual eligibility requirements for RTAA, as described in the answer to question 10 of this TEGL.

5. **Inquiries**. States should direct all inquiries to the appropriate ETA Regional Office.