

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Office of Trade Adjustment Assistance
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-20

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
AFFILIATE AMERICAN JOB CENTER MANAGERS
COMPREHENSIVE AMERICAN JOB CENTER MANAGERS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS
STATE UI DIRECTORS
TRADE ADJUSTMENT ASSISTANCE LEADS

FROM: JOHN PALLASCH /s/
Assistant Secretary

SUBJECT: Guidance on Trade-Affected Workers' Withdrawal from Approved Training under the Trade Adjustment Assistance (TAA) Program

1. **Purpose.** To bring attention to the requirements of the TAA Program regulations as they relate to the withdrawal of a trade-affected worker from approved training.
2. **Action Requested.** State Workforce Agencies (SWAs or states) are asked to distribute this information to the appropriate state and local staff; update policies and procedures to align with the requirements of the regulations described in this guidance; and advise trade-affected workers of the potential impacts of voluntarily withdrawing from approved training. Potential impacts include the loss of eligibility for Trade Readjustment Allowances (TRA), and the worker's requirement to be financially liable for repayment of the portion of the approved training that was not completed.
3. **Summary and Background.**
 - a. Summary – The TAA Program provides a wide array of reemployment services to trade-affected workers, including training. About fifty percent of TAA Program participants enroll in approved training each fiscal year (FY), however, in FY 2019, only seventy-five percent of participants completed their approved training. This means that nearly one in four participants that enrolled in training did not complete the training. Employment outcomes for participants that complete their approved training and receive a credential are significantly higher than those that do not complete their approved training.¹

¹ Trade Adjustment Assistance for Workers Program FY 2019 Annual Report to Congress

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- b. Background – The Employment and Training Administration (ETA) published a Final Rule implementing the Trade Adjustment Assistance Reauthorization Act of 2015 on August 21, 2020, (85 FR 51896). The TAA Final Rule is codified at 20 CFR part 618 and became effective on September 21, 2020. Voluntary withdrawal from approved training, covered at Section 618.645, requires that if certain conditions are met an overpayment must be established, and the participant must repay the costs of the non-completed portion of approved training. This requirement is not new, it was also contained in the previous regulations under 20 CFR part 617. However, during training provided by the Department on the TAA Final Rule, it became clear that many states were not familiar with or were not enforcing this requirement.

4. Withdrawal from Approved Training.

- a. **Notification to Workers:** States must advise a worker who chooses to withdraw from approved training that choosing to do so may result in the establishment of an overpayment under 20 CFR 618.832 of the TAA Program regulations if there is not good cause for the withdraw. If an overpayment is established and collection is not waived as outlined below, the participant would be financially liable for repayment of the portion of the approved training that was not completed. In addition, States must also advise such a worker that a withdrawal may also negatively impact their eligibility for TRA. For instance, a worker receiving Additional or Completion TRA would no longer be eligible for TRA since they are no longer participating in training.
- b. **Exception for Uniformed Services:** The TAA Program regulations, at 20 CFR 618.645(b), provide an exception for trade-affected workers who performed a period of service in the Uniformed Services and had to withdraw from approved training to meet their service obligations. The regulations allow the worker to resume training or begin a new training program, if needed.
- c. **Justifiable Cause:** There are also provisions in the TAA Program regulations, at 20 CFR 618.780(b)(3)(iii), where a worker may have justifiable cause for withdrawing from approved training. In general, these are situations where the worker, although having acted diligently, was unable to complete the training. A trade-affected worker might withdraw from training for reasons other than obtaining employment. Determinations of whether the worker had good cause to withdraw from training are made in compliance with applicable State law on a case-by-case basis.
- d. **Job Search and Relocation Allowances:** A worker who withdraws from approved training may receive job search and relocation allowances if they are otherwise eligible.
- e. **Continuing Training After Obtaining Employment:** A trade-affected worker who obtains suitable employment before training is completed may choose to continue in the approved training, but must continue to satisfactorily meet any training benchmarks established under 20 CFR 618.660. If a worker chooses to continue their approved training, the state must determine whether the training program needs to be amended, and

must discuss with the worker whether continuing in the approved training furthers the worker's employment goals.

- f. **Withdrawing from Training After Obtaining Employment:** A trade-affected worker may decide to not continue or complete a training program if they become reemployed. For many workers, employment will limit the time available to attend training and therefore prevent the worker from completing training. In this scenario, the worker would likely have good cause – established at 20 CFR 618.730 – for not completing the training. However, determinations of the applicability of good cause are made on a case-by-case basis, and a state may find that good cause does not exist where circumstances support such a finding.
- g. **Overpayments:** Rules and requirements of overpayments are established at 20 CFR 618.832. States must waive repayment if the payment was made without fault of the participant and requiring repayment would cause a financial hardship. As provided at 20 CFR 618.832(a)(3), “A financial hardship exists if recovery of the overpayment would result in the person's (or the person's household's) loss of or inability to pay for ordinary and necessary living expenses.” If the conditions for a waiver of an overpayment are not met, the participant would be liable for repayment, which could be recovered from offsets of other payments under the TAA Program, Unemployment Insurance (UI), or other federal laws administered by the states, subject to the provisions at 20 CFR 618.832(e).
- h. **Importance of Quality Assessments and Labor Market Information:** According to TAA Program data, 75 percent of workers who enroll in training complete their training. Quality assessments and a review of labor market information are vital to ensuring that a decision to approve a training plan meets the criteria established at 20 CFR 618.610 are essential to maximizing training completion. This includes the determination that there is no suitable employment available to the worker, as further discussed in TEGL No. 03-20 *Determining the Availability of Suitable Employment Under the Trade Adjustment Assistance (TAA) Program's Final Rule to Return Trade-Affected Workers to Employment as Quickly as Possible*. In some instances, it is later determined that a worker could have obtained the new employment without ever having received training. Although there are many reasons why a worker might become employed in an occupation different than that they were training for, high quality assessments combined with actionable labor market information will help reduce this. States should focus on the provision of quality assessments, case management, and a review of labor market information prior to the approval of training.
- i. **Ongoing Employment and Case Management Services:** The regulations, at 20 CFR 618.360, explicitly require the provision of employment and case management services to workers enrolled in training. Part of the justification for this requirement is to require counselors to monitor the progress of workers enrolled in training, to determine if an amendment to the training program is needed, and to assist the worker in their work search efforts while still participating in training. Activities related to job search should increase as the worker nears the scheduled completion of training. This will help ensure that there is a limited gap – if any – between the completion of training and employment.

These ongoing services will also determine if there is a need to modify the training program due to the benchmarks established under 20 CFR 618.660 and changing labor market conditions that might necessitate a change in occupational goals or industry focus.

- j. **Program Monitoring by States:** As established at 20 CFR 618.860(d)(2)(i), states must conduct regular oversight and monitoring of it's the TAA program, determine that expenditures have been appropriate, and ensure compliance with the statute, the regulations, and administrative guidance. The Governor-Secretary Agreement executed under 20 CFR 618.804 requires that this review include “a sample of worker files to ensure effective and efficient operation and administration of the program.” If, during a review of these files, it is determined that a worker withdrew from training, the state must follow up to determine if a determination was made on whether the worker had good cause for withdrawing from the training and whether or not an overpayment should have been established. States should also use this opportunity to review the quality of employment and case management services – notably assessments – rendered by service providers. If the state determines that the quality of services do not meet the standards of the TAA Program, corrective action should be required and questioned costs established, if appropriate.
- k. **Oversight by the Department:** The Department, through the Regional Offices, also conducts oversight of the TAA Program. This oversight includes a review of administrative, financial, and programmatic information – including case files. From time to time, the Department also conducts a review of redeterminations and appeals rendered through the state unemployment insurance adjudication process. In its reviews, the Department will explore the quality of assessments and services, appropriateness of training and benefit determinations, and outcomes. If the Department determines that the state has not ensured the provision of quality services or if inappropriate determinations have been made, in addition to any findings that may be issued, the Department may also establish questioned costs.

5. **Inquiries.** Please direct inquiries to the appropriate Regional Office.

6. **References.**

- Chapter 2 of Title II of the Trade Act of 1974, as amended (Pub. L. 93-618) (Trade Act) (codified at 19 U.S.C. §§ 2271 et seq.);
- TAA Final Rule, 20 CFR Part 618, 85 FR 51896 (August 21, 2020);
- TEGL No. 03-20, *Determining the Availability of Suitable Employment Under the Trade Adjustment Assistance (TAA) Program's Final Rule to Return Trade-Affected Workers to Employment as Quickly as Possible*
- Agreement Between the Governor and Secretary of Labor, United States Department of Labor, to Carry Out the Provisions of Subchapters A, B, and C of Chapter 2 of Title II of the Trade Act of 1974, as amended by the Trade Adjustment Assistance Reauthorization Act of 2015

7. **Attachment(s).** None