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DEPARTMENT OF LABOR AND EMPLOYMENT
DIVISION OF EMPLOYMENT AND TRAINING
WORKFORCE DEVELOPMENT PROGRAMS

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Category: TRA
Subject#: Guidance on the issuance, Renewal and Revocation of Waivers for TRA purposes
Source: Federal/State
Revise/Replace: PGL 08-13-TRA
Contact: Workforce Development Programs Director
Distribution: TAA Workforce Center Counselors
Colorado One-Stop System Policy Guidance Letter#: 10-14-TRA
Date: August 4, 2010

I. REFERENCE(S): Public Law 107-210 Section 114 and 115; ETA Training and Guidance Letter 11-02; ETA Training and Guidance Letter 11-02, Change 3; Public Law 111-5; ETA Training and Guidance Letter 22-08; ETA Training and Guidance Letter 22-08, Change 1

II. PURPOSE: To advise Workforce Center TAA Counselors of new guidelines for issuing, reviewing and revoking a Waiver of the Training Requirement (Waiver) for the purposes of preserving the worker's rights to Trade Readjustment Allowance (TRA)

III. BACKGROUND: There are currently two different laws being administered by the TRA Office. The Trade Act of 2002 law applies to workers who are entitled to benefits under petitions that are numbered from 50,000-69,999. The Trade and Globalization Adjustment Assistance Act of 2009 applies to workers who are entitled to benefits under petitions that are numbered 70,000 and up. While there are differences between these two laws, the treatment of waivers is very similar. The primary difference between the two laws in terms of TRA is the amount of TRA available and the qualification deadlines.

In order to qualify for TRA benefits under the 2002 law, a worker must apply for TAA approved training or request a waiver of the training requirement within 8 weeks of the petition certification or 16 weeks of the worker's separation date, whichever is later. This is known as the 8/16 deadline. To qualify for TRA benefits under the 2009 law, a worker must apply for TAA approved training or request a waiver of the training requirement within 26 weeks of the petition certification date, or 26 weeks of the worker's separation date. Under both laws, a waiver can be issued for one of the following reasons: Recall Status, Marketable Skills, Retirement, Health, TAA Approved Training is currently unavailable, or Training is not available.

When the Trade Act of 2002 was initially enacted, the USDOL Office of Trade Adjustment Assistance released ETA Training and Guidance Letter 11-02, which advised states to immediately issue waivers under the marketable skills requirement in order to preserve a worker's TRA and HCTC (Health Coverage Tax Credit) eligibility. The Office of Trade

Adjustment Assistance later released ETA Training and Guidance Letter 11-02, Change 3. This Training and Guidance Letter instructed the state agencies to wait until the end of the 8/16 deadline to issue a waiver. The reason for waiting to issue the waiver was so that a comprehensive assessment of the worker's skills and training needs could be made before the waiver was issued. It was considered preferable to enroll the worker into training within the deadline rather than automatically issuing a waiver. Under the new Training and Guidance Letter a "Marketable Skills" waiver cannot be issued unless the worker has documented skills that are marketable in the area where the worker is seeking employment. Also, once a worker no longer meets the reason for which the waiver was issued, the reason for the waiver must be changed, if the worker meets one of the other reasons, or it must be revoked. Once the waiver is revoked, the worker must be enrolled in TAA approved training in order to receive TRA benefits.

The biggest change to the waiver process that resulted from the passing of the 2009 law is the requirement of an Individual Employment Plan (IEP). Before any waiver can be issued an IEP that excludes training (with the exception of "Training is Currently Unavailable") must be completed. If a "Marketable Skills" waiver has been issued, then a new IEP must be completed with every waiver review to ensure that the worker's skills are still marketable

IV: **POLICY/ACTION:** When issuing an initial waiver or reviewing or revoking a waiver, all TAA counselors should follow the instructions provided in the TRA Waivers Desk Aid. The most current version of the TRA Waivers Desk Aid is available on the TAA Counselors Forum page in the E-Colorado Portal. Both the 2002 and 2009 laws have their own desk aids for waivers that are law specific. The requirements and limitations listed below for the "Marketable Skills," "Enrollment is Unavailable" and "Approved Training is Not Reasonably Available" reasons apply to workers certified under both the 2002 and 2009 laws.

"Marketable Skills" waivers are only valid for 90 calendar days from the date that the waiver is issued. At that time, it is determined that the worker's skills are no longer marketable and one of the following things must occur:

- the waiver reason must be changed, if another reason is appropriate,
- the waiver must be revoked, or
- the worker must enroll in TAA approved training.

Effective the release date of this letter, a "Marketable Skills" waiver scheduled for review after the above 90-day timeline must be revoked, or the reason for the waiver must be changed or the worker must enroll in TAA approved training before the next waiver review.

If a waiver is issued because "Enrollment is Unavailable," then an approvable vocational plan in which training is scheduled to start within 60 days must have been submitted at the time of issuance of the initial waiver. If there are extenuating circumstances that prevent the worker from starting training within 60 calendar days, then training must start within 180 calendar days. The extenuating circumstances must be pre-approved by the TRA Office before a waiver may be issued. When issuing this waiver, the counselor must list the date that training starts and the name of the training institution on the waiver.

If a waiver is issued because "Approved Training is Not Reasonably Available," then a completed, but denied, training plan must be submitted at the time of the initial waiver.

The reason for the denial of the training plan must be one of the following:

- Training is not reasonably available to the worker
- Suitable training is not available at a reasonable cost
- No training funds are available

Waivers under the 2002 law must be reviewed every 30 or fewer calendar days. Waivers under the 2009 law must be reviewed monthly. If the scheduled review date is on a weekend, holiday, or a day that the counselor is not working, then the waiver must be reviewed prior to the review date listed on the waiver. If a waiver is not reviewed by the 30-day or monthly review date, the waiver will expire and must be revoked.

Under the 2009 law, good cause may be cited for missed TRA deadlines. If a counselor believes that a worker has good cause for missing a deadline, then the counselor must submit the reason for the missed deadline to the TRA Coordinator for approval. A determination of good cause may only be issued by the TAA Office.

V. IMPLEMENTATION DATE: Upon the release date of this PGL.

VI. INQUIRIES: Please direct all inquiries to Melissa Pratt at Workforce Development Programs 303-318-8841.

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Clarke D. Becker, Director
Workforce Development Programs