

Attachment A – Waivers from Training

The following are the descriptions of the 6 specific criteria for approval of a waiver of the training requirement for basic TRA eligibility (only one criterion needs to be met in order to issue a waiver):

| Waiver Type | 2002 & 2009 Programs | 2011 and 2015 Program |
|--------------------------------------|----------------------|------------------------|
| Health Condition | X | X |
| Enrollment in Training Not Available | X | X |
| No Training is Available | X | X |
| Recall | X | DOES NOT EXIST ANYMORE |
| Marketable Skills | X | DOES NOT EXIST ANYMORE |
| Retirement | X | DOES NOT EXIST ANYMORE |

1. **Recall (available for participants covered by the 2002, 2009 law)** — The worker has been notified that he/she will be recalled by the firm from which the separation occurred.
Note: This requires that the worker has received specific notice of recall to the worker's adversely-affected employment. It is required that the notice of recall be in writing from the firm. A copy of the recall notice must be retained in the case file.
2. **Marketable Skills (2002, 2009)** — The worker possesses marketable skills for suitable employment [as determined pursuant to an assessment of the worker's skills, which may include the profiling system under section 303(j) of the Social Security Act [42 U.S.C. 503(j)], carried out in accordance with guidelines issued by the Secretary] and there is reasonable expectation of employment at equivalent wages in the foreseeable future.
 - a. The term "Marketable Skills" may include the possession of a postgraduate degree from an institution of higher education [as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)], or an equivalent institution, or the possession of an equivalent postgraduate certification in a specialized field.
 - b. An assessment must be completed when applying for a Marketable Skills waiver from training and the results, including a description of the individual's marketable skills, recorded in MOSES.
 - c. A waiver from training due to Marketable skills should be used as a means of encouraging more rapid reemployment and the use of up-front job search.

For any eligible individual covered under a petition filed *before* May 18, 2009, a Marketable Skills waiver may be used if an applicant's main focus is to find re-

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employment in order to participate in the Alternative Trade Adjustment Assistance (ATAA) program. It is possible that an individual may need added or enhanced skills to obtain ‘suitable’ employment in the current labor market but he/she is not interested in training and would prefer to find any employment and apply for ATAA. Using the Marketable Skills Waiver is appropriate for this purpose but the individual will need to participate in intensive reemployment services with a career counselor in order for the counselor to monitor eligibility deadlines and/or the exhaustion of regular unemployment compensation.

If the individual reaches the 26 week deadline to be eligible for ATAA and has been unsuccessful in finding employment, then an additional assessment will be needed to determine either that the individual possesses current marketable skills or is in need of occupational training in order to become reemployed.

For any eligible individual covered under a petition filed *on or after* May 18, 2009, the above requirement does not pertain as the 26 week deadline to obtain employment is no longer applicable under the Reemployment Trade Adjustment Assistance (RTAA) regulations.

3. **Retirement (2002, 2009)** — The worker is within 2 years of meeting all requirements for entitlement to either Social Security Benefits or a private pension sponsored by an employer or labor organization. There is no set age for retirement; this is determined on an individual basis. If this criterion forms the basis for the waiver request, the individual must document whether the retirement is to be undertaken in conjunction with Social Security or a Private Pension plan and the date when the individual becomes eligible to participate.
 - a. For eligibility under Social Security, the counselor must receive and maintain a copy of a statement from the Social Security Administration that indicates the individual meets the eligibility criteria.
 - b. For eligibility under a Private Pension Plan, the counselor receive and maintain a copy of a Pension letter indicating the individual’s age or date of eligibility to begin collecting pension payments.
4. **Health (2002, 2009, 2011 and 2015)** — The worker is unable to participate in training due to the health of the worker, except that this waiver does not exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.
 - a. For this criterion to form the basis of a waiver approval, a physician’s statement clearly indicating that the individual is not able to attend training but is able and available to work is required.
5. **Enrollment Unavailable (2002, 2009, 2011 and 2015)** — The first available enrollment date for the approved training is within 60 days after the date of the determination. Or, if later, there are extenuating circumstances for the delay in enrollment.
 - a. “Enrolled in training” means that the worker’s application for training has been approved by the Department of Career Services Trade Unit (DCS) and that the training institution has furnished written notice to DCS that the worker has been accepted into the approved program which is to begin within 30 days of such approval (20 CFR 617.11(a)(2)(vii)(D)). No training will be approved if it has not met the necessary requirements to be included on the Trade Approved Training List.

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6. **Training Not Available (2002, 2009, 2011 and 2015)** — Training approved by the Department of Career Services Trade Unit is not reasonably available to the worker from either governmental agencies or private sources; no training that is suitable for the worker is available at a reasonable cost; or no training funds are available.

Extenuating Circumstances Extension

“Extenuating circumstances” (EC) are situations that could arise when training programs are abruptly cancelled or where the first available enrollment date is beyond the end of the 60-day period, as well as in cases where an individual suffers injury or illness that adversely affects his/her ability to enroll in training. The intent of the statutory time limitations is to assure that displaced workers who are in need of training become enrolled in training as quickly as possible in order to expedite their adjustment and reemployment.

The start date for this type of “extenuating circumstances” extension must be either the 8/16 week deadline or the 26 week deadline, depending on the date of the petition under which the individual is covered.

Good Cause Provision (2002 and 2009)

Section 1825 of The Trade and Globalization Adjustment Act of 2009 allows the Commonwealth to invoke, relative to TRA benefit eligibility, the “Good Cause” provisions of the state’s unemployment insurance law [MGL 151a, §39(b)] regarding statutory time limitations affecting benefit eligibility. There are two types of Good Cause provisions: “Good Cause within 30 Days” and “Good Cause beyond 30 Days”.

If an individual has missed either of the 26-week deadlines, he/she should apply for an Extenuating Circumstances (EC) extension. If the individual has also missed the EC deadline, and it is within 30 days after the EC deadline, then he/she may request an extension under the “Good Cause Within 30 Days” provision.

There are 11 reasons an individual may be approved for a “Good Cause Within 30 Days” provision:

- Career Center or State staff directly discouraged the individual to file
- Death of household member or immediate family
- Delay in mail
- Determination / Notice never received
- Emergency family crisis
- Illiteracy or mental disability resulting in the inability to understand
- Intimidation, coercion, or harassment by employer
- Limited English
- Out of state seeking employment
- Serious illness or hospitalization
- Other

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If a worker has missed the 26-week deadlines, missed the EC deadline, **and** it is beyond 30 days after the EC deadline, then he/she may request an extension under the “Good Cause Beyond 30 Days” provision.

There are 4 reasons a worker may be approved for a “Good Cause Beyond 30 Days” provision:

- Career Center or State staff directly discouraged the individual to file
- Determination / Notice never received
- Determination / Notice received after 30 days
- Intimidation, coercion, or harassment by employer

Notification that an individual has been informed of his/her potential eligibility for Trade benefits must be documented in MOSES (NOTES). To maintain potential eligibility for TRA, the individual will then have 60 days to either enroll in an approved training program or be approved for a waiver from the training requirement.

No other reasons will be accepted for a “Good Cause Beyond 30 Days” extension.

Federal Good Cause (2011 and 2015)

Federal “Good Cause” provision of Section 234 of the 2011 Act, which allows for a waiver of deadlines relating to time limitations on filing an application for TRA or enrolling in training based on “good cause” determined under Federal criteria established by the Secretary.

Career Counselors must consider the following factors, if relevant, before waiving these time limitations. These factors are:

1. Whether the worker acted in a manner that a reasonably prudent person would have acted under the same or similar circumstances.
2. Whether the worker received timely notice of the need to act before the deadline passed.
3. Whether there were factors outside the control of the worker that prevented the worker from taking timely action to meet the deadline.
4. Whether the worker’s efforts to seek an extension of time by promptly notifying the state were sufficient.
5. Whether the worker was physically unable to take timely action to meet the deadline.
6. Whether the worker’s failure to meet the deadline was because of the employer warning, instructing, or coercing the worker in any way that prevented the worker’s timely filing of an application for TRA or to enroll in training.
7. Whether the worker’s failure to meet the deadline was because the worker reasonably relied on misleading, incomplete, or erroneous advice provided by the state.
8. Whether the worker’s failure to meet the deadline was because the state failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker’s entitlement to TRA.
9. Whether there were other compelling reasons or circumstances which would prevent a reasonable person presented from meeting a deadline for filing an application for TRA or enrolling in training, including:

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- a) neglect, a mistake, or an administrative error by the state
- b) illness or injury of the worker or any member of the worker's immediate family
- c) the unavailability of mail service for a worker in a remote area
- d) a natural catastrophe, such as an earthquake, fire, or flood
- e) an employer's failure or undue delay in providing documentation, including instructions, a determination or notice, or pertinent and important information
- f) compelling personal affairs or problems that could not reasonably be postponed, such as an appearance in court or an administrative hearing or proceeding, substantial business matters, attending a funeral, or relocation to another residence or area
- g) the state failed to effectively communicate in the worker's native language and the worker has limited understanding of English
- h) loss or unavailability of records due to a fire, flood, theft, or similar reason. Adequate documentation of the availability of the records includes a police, fire, or insurance report that contains the date of the occurrence and the extent of the loss or damage.

Revocation of Waivers

The DCS Trade Act Coordinator shall revoke a waiver issued if it is determined that the basis of a waiver is no longer applicable to the individual and shall notify the individual in writing of such revocation.

Summary

In order for an individual to be entitled to Trade Readjustment Allowances (TRA) he/she must be enrolled in training, participating in training, have completed training or *be under a "waiver" of training* by either the applicable deadline (depending on the filing date of the petition under which the individual is covered) or by the end date of any extension of the deadline granted through a 45-day "extenuating circumstance" deadline, good cause and/or equitable tolling of the deadline when applicable.