

## **Interim Policy on the Trade Adjustment Assistance Program Under the Trade Act of 2002**

### **References:**

The Trade Act of 2002; the Trade Act of 1974, as amended; the Workforce Innovation and Opportunity Act; Omnibus Trade Act of 2010; State Plan; [20 CFR part 617](#) and [618](#); [29 CFR part 90](#); [41 CFR part 301-11](#); [Federal Register, Vol. 75, No.63/April 2, 2010](#); revised Trade Act Participant Report; [TEGL 16-10, Ch. 2](#), [TEGL 14-14](#), and [TEGL 5-15, Attachment A](#).

### **Background:**

In the One-Stop environment established by WIOA, multiple enrollments with a broad range of partners and programs shall take place in order to produce successful outcomes for trade-impacted workers. The Trade Adjustment Assistance Reform Act of 2002 amended and added provisions to the TAA program including a program of Health Coverage Tax Credits (HCTC) for certain trade-impacted workers and others. It also created the Alternative Trade Adjustment Assistance Program (ATAA) for Older Workers program and a separate TAA program for farmers. Workers covered by the 2002 Amendments before the 2009 Amendments went into effect on May 18, 2009 are identified by petition numbers ranging from 50,000 to 69,999. These workers are subject to the provisions of the 2002 Amendments. Due to the expiration of provisions under the Omnibus Trade Act, workers in the TAA program covered by petitions received after February 14, 2011, were also served under the provisions of the 2002 Amendments, as if the 2009 Amendments never existed. However, regulatory changes to program administration and funding codified at 29 CFR part 618 and reporting required through the revised Trade Act Participant Report (TAPR) continued to apply. Petitions and workers covered by petitions received on or after February 15, 2011 (identified by a petition number greater than or equal to 80,000) became subject to the provisions of the 2002 Amendments. Workers covered by those petitions may be eligible for TAA benefits provided under the 2002 Amendments, including but not limited to the ATAA wage subsidy for certain reemployed older workers. The Trade Adjustment Assistance Extension Act of 2011 (TAAEA) was signed into Law on October 21, 2011. Workers covered under certified petitions numbered 80,000 and above who are receiving TAA benefits and services have the option between December 20, 2011 and March 19, 2012 to choose to receive those benefits and services available under the new program established by the TAA Extension Act of 2011. These benefits are provided at no expense to employers. HCTC expired on January 1, 2014. Beginning January 1, 2014, every eligible TAA recipient became responsible for paying his/her full health coverage premiums without HCTC; and all individuals now have a range of options in Health Insurance Marketplaces and may be eligible for new tax credits for health insurance or expanded Medicaid options.

The authorization for the TAA program was set to expire on December 31, 2014. However, Congress took action on December 13, 2014, by passing the FY 2015 Omnibus Appropriations Act, which was signed into law by President Obama on December 16, 2014. Termination provisions relating to the operation of the TAA program, as provided in TEGL 14-14, do not apply to the operation of TAA in FY 2015 (through September 30, 2015).

**Action:**

After a 10 day review period, this policy is considered final. Questions and comments should be submitted in writing to the WIOA Policy Mailbox, [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

**Policy:**

As a required partner in the One-Stop service delivery system under WIOA, the TAA program is required to be accessible through American Job Centers.<sup>1</sup> Sec. 512(hh) of the Workforce Innovation and Opportunity Act (WIOA) substitutes WIOA for the Workforce Investment Act of 1998 in the Trade Act, and does not change the status of the Trade Adjustment Act (TAA) as a required partner.

**Purpose of TAA**

American workers whose jobs (either primarily or secondarily affected) are lost as a result of increased imports or from a shift of production to certain countries may apply for Trade Adjustment Assistance TAA under the Trade Act of 2002. TAA is federal assistance for U.S. Workers who are significantly harmed by U.S. trade policies. TAA benefits are to help workers adjust to the employment problems resulting from increased foreign imports of products which directly compete with, or are like, those produced by the workers' company, causing a significant loss of U.S. jobs.

**Transition from the Reversion 2014 Program to the 2015 Program**

Section 405 of the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015) provides for the transition of workers certified under petitions filed on or after January 1, 2014, and before the date of enactment, from the Reversion 2014 Program to the 2015 Program beginning 90 days after the date of enactment. Since the TAARA 2015 was signed into law on June 29, 2015, the 90-day period will end on 11:59 P.M. EST, September 27, 2015. This means that, beginning on September 28, 2015, the Reversion 2014 Program will end and Reversion 2014 Program participants will be served under the 2015 Program. Reversion 2014 Program participants receiving benefits and services on September 27, 2015, will continue to receive those benefits after that date so long as they continue to meet the requirements for the benefit, as explained in TEGL 5-15, Attachment A (Operating Instructions). All benefits received before September 28, 2015, by a worker under the Reversion 2014 Program (covered by a certification of a petition in the series TA-W-85,000 - 89,999) shall be included in any determination of the maximum benefits for which the worker is eligible under the 2015 Program beginning on September 28, 2015. The 2002 Program, 2009 Program, and 2011 Program will continue, and a worker covered by a certification

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<sup>1</sup> WIOA Section 121(b)(1)(B)(vii)

issued in response to a petition filed before January 1, 2014, will continue to be served under one of these programs based on the petition number associated with that certification.<sup>2</sup>

The Operating Instructions describe how Section 405 of the TAARA 2015 addresses three distinct cohorts of workers: workers covered by certifications of petitions issued before January 1, 2014 (numbered TA-W84,999 and below); workers covered by certifications of petitions, denials of petitions, or pending petitions filed on or after January 1, 2014, and before June 29, 2015 (numbered TAA-W-85,000-89,9999); and workers covered by certifications of petitions issued on or after June 30, 2015 (numbered TA-W-90,000 or above).<sup>3</sup> For more information, see [Program 2015 Policy]

## **Establishing Group Eligibility**

### **Who May File A Petition**

Petitions for TAA may be filed by a group of three workers from the same firm at the same job location, a union official, a state or local workforce agency representative in a local American Job Center, an employer official, or a legally authorized representative. Submission of a completed Petition Form signifies a desire to file for both the TAA and Alternative Trade Adjustment Assistance Program.

### **Time Limit For Filing A Petition**

You must date and submit the Petition Form within **1 YEAR** from the date on which the workers were separated or had their hours or wages reduced.

### **Where To Get Petition Form**

The TAA form is available at all American Job Centers, at the Nebraska Department of Labor (NDOL), Office of Employment and Training (OE&T) in Lincoln at (402) 471-9883, from the Unemployment Insurance TRA benefit staff in Lincoln at (402) 471-9896, or direct from the U.S. Department of Labor (USDOL) Employment and Training web site at <http://www.doleta.gov/tradeact>.

### **Where The Petition Form Is Filed**

The state shall be prepared to assist petitioners in completing and filing petitions. The **TAA** petition must be filed simultaneously with both USDOL in Washington, DC and the TAA Coordinator of the state where the firm is located. If the Petition Form includes firms in different states, copies of the completed Petition Form must be filed in each state where firms are located.

Fax the completed Petition Form to **202-693-3585, OR**

Mail the completed Petition Form to both:

**U.S. Department of Labor**  
Office of Trade Adjustment Assistance  
200 Constitution Avenue N.W.

**Nebraska Department of Labor**  
Office of Employment and Training  
Attention: TAA Coordinator

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<sup>2</sup> TEGL 5-15, Attachment A

<sup>3</sup> Id.

Room N-5428  
Washington, D.C. 20210

550 South 16<sup>th</sup> Street  
P.O. Box 94600  
Lincoln, NE 68509-4600

If a petition is not received on the same day by both USDOL and NDOL, it will be considered to be filed on the date on which the petition was received by the Office of Trade Adjustment Assistance at USDOL.

### **Criteria for Certification of Eligibility**

The petition must satisfy two criteria:

1. A significant number or proportion of the workers in the workers' firm, or an appropriate subdivision of such firm, must have become totally or partially separated or be threatened with total or partial separation.
2. The second criterion is satisfied if either A or B below are satisfied:
  - A. (i) sales or production, or both, at the petitioning workers' firm or subdivision must have decreased absolutely, and  
(ii) imports of articles like or directly competitive with articles produced by the petitioning workers' firm or subdivision have increased, and  
(iii) the increase in imports described in (ii) contributed importantly to the petitioning workers' separation or threat of separation and to the decline in sales or production at the firm or subdivision.
  - B. (i) there has been a shift of production by the petitioning workers' firm or subdivision to a foreign country of articles like or directly competitive with the articles which are produced by the firm or subdivision, and  
(ii) one of the following conditions applies:
    - a. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; or
    - b. the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, the African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or
    - c. there has been or is likely to be an increase in imports of the articles that are like or directly competitive with articles which are or were produced by the firm or subdivision.<sup>4</sup>

The applicable countries are those included in three specific trade-promotion Acts and any others that are parties to free-trade agreements with the United States. The group of countries that are applicable for these purposes may change from time to time; a current list of such countries will be available on the TAA Web site. For shifts of production to countries that do not fall into either of those groups, there is a third criterion that covers actual or prospective increases of imports of like or directly competitive products. The latter criterion does not require that the actual or prospective increases in imports come from the country to which the shift of production occurred.

There are basically two groups of workers that can be certified as eligible to apply for adjustment assistance because the workers are secondarily affected –

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<sup>4</sup> 19 U.S.C. 2272, Sec. 222

- workers who supply components (upstream) to a firm whose workers are certified (primary), or
- workers who perform additional, value-added production and finishing operations (downstream) for a firm whose workers are certified (primary).

Upstream workers must directly supply the primary firm. The articles produced by upstream workers must be directly incorporated into the articles that were the basis for the certification of the primary firm's workers. Supplier chains are often categorized according to "tiers." Firms in the first tier supply components directly to the producer of the final product. Firms in the second tier supply components to firms in the first tier, and so forth. The secondary-worker coverage applies only to workers employed by firms in the first tier. The components supplied to the primary firm by the upstream workers must either account for at least 20% of the production or sales of the upstream firm, or the loss of business with the primary firm by the upstream firm must have contributed importantly to the upstream workers' separations or threat of separations. For upstream workers to be certified as secondarily affected, the import impact on the primary firm can come from increased imports from any country or a shift of production to any country that qualifies under the shift-of-production criteria.

Downstream workers must directly perform additional, value-added production processes, including final assembly or finishing, on the products of the primary firm. Downstream workers can only be certified as secondarily affected if the workers of the primary firm are certified based on increased imports from Canada or Mexico or a shift of production to Canada or Mexico. Also, the downstream workers' firm must have suffered a loss of business with the primary firm that contributed importantly to the workers' separations or threat of separations.

Under the 2002 Act, the TAA program will be responsible for benefits and services provided to workers who are certified as secondarily affected pursuant to petitions received on or after November 4, 2002. The benefits and services available to such workers, and the eligibility criteria applicable to them, are exactly the same as for workers who are certified as primarily impacted.

### **Petition Fact-Finding Process:**

When the **TAA** petition is received, USDOL's Office of Trade Adjustment Assistance conducts a fact-finding investigation. The state shall assist the Secretary in the review of the petition by verifying such information and providing other assistance as the Secretary may request. This investigation determines whether increased imports "contributed importantly" to decreased production or sales and total or partial worker separations. It is USDOL's responsibility to investigate the facts. They are required to make an eligibility determination within 40 days after a petition is filed. If the petition is approved, a certification is issued. When a decision has been made by USDOL, the certification or denial is sent to the Nebraska Commissioner of Labor and the Administrative Trade Unit.

### **Establishing Individual Eligibility**

The TAA Coordinator in NDOL's OE&T shall provide each affected worker with written certification, what TAA services are available, and how to apply for those services.

Each certification contains an “impact date,” which identifies when layoffs or reduction in work schedules began. Certifications also contain a “termination date.” Only workers whose last total or partial separation occurred on or after the impact date, and before the termination date, are eligible to apply for TAA services with the exception of instances referred to in 20 CFR § 617.10. Hours of work must have been reduced to 80% or less of their average weekly hours or 80% or less of their average weekly wage. For the purpose of calculating hours, the total hours employed each week will be rounded to the nearest 1/10 of an hour. For example, a worker who is employed between 35.9 and 35.94 hours per week would have his/her hours rounded down to 35.9 hours. Whereas a worker who is employed between 35.95 and 35.99 hours per week, would have his/her hours **rounded up** to 36 hours per week.

OE&T shall ensure a published notice of the certification is placed in the newspaper in the areas where the certified workers reside or issue written notices to each affected individual.

It is recommended that all dislocated workers go to their local American Job Center even if they are awaiting a decision on TAA certification. Core services are available and will be tracked on NEworks. Eligibility may be determined for the WIOA Title I Dislocated Worker program and, when participants begin receiving WIOA-funded intensive and training services, they shall be tracked on NEworks. Immediately beginning the process of needs assessment improves participation rates and allows individuals more time to consider all of the options available to them. This is particularly critical due to the time lapse that could occur while awaiting TAA petition determinations. It is important the individual calls the Unemployment Insurance Claim Center where his/her parent claim resides to file an application for an eligibility determination to receive Unemployment Insurance benefits and/or Trade Readjustment Allowances (TRA) payments.

### **Adversely Affected Worker**

An adversely affected worker is an individual who, because of lack of work in adversely affected employment: has been totally or partially separated from such employment; or has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.<sup>5</sup>

A voluntary quit can, under some circumstances, be a “lack of work” separation for purposes of qualifying as an adversely affected worker who may apply for Trade Adjustment Assistance.

### **Early Intervention Services**

Early intervention services including rapid response assistance and appropriate career services, as described in Sec. 134 of WIOA, shall be made available to the workers covered by the petition to the extent authorized under the WIOA and other Federal laws. Early intervention services that will be beneficial to potential trade-affected workers may include, but are not limited to, orientation, surveying the workers, initial assessment of skill levels, aptitudes, and abilities, the provision of labor market information, job search assistance, stress management, and financial management workshops. The staff that provides these services may come from a variety of funding sources, particularly Wagner-Peyser or WIOA

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<sup>5</sup> 20 CFR 617.3(c)

Title I. In most instances, the Rapid Response informational meeting(s) shall be held in the city where the affected workers worked. These meetings outline the TAA services available.

### **Co-enrollment (Concurrent Participation)**

Co-enrollment means enrollment in more than one program at a time, such as, concurrent enrollment in the WIOA Dislocated Worker program and the TAA program. Since most trade-impacted workers are by definition dislocated workers for the purposes of WIOA Title I, it is recommended these individuals enter the One-Stop service delivery system immediately following the announcement of a layoff. Once the certification has been issued, workers shall be informed they are covered by this certification and are eligible to apply for TAA benefits. If approved for a WIOA-funded intensive service or for any TAA training activity, they shall be co-enrolled in the TAA program and the WIOA Dislocated Worker program. Individuals receiving services solely funded by TAA and where no training services are provided (i.e. job search, relocation, waivers) shall not be co-enrolled. Since NEworks is an integrated Management Information System, one record is established for each participant and multiple program services (including Wagner-Peyser, WIOA, Rapid Response, WIOA Dislocated Worker, and Trade Adjustment Assistance) shall be attached to that record in an integrated manner, as needed. For co-enrolled individuals receiving WIOA-funded intensive services and training exclusively funded by TAA, there is no requirement to use providers certified as eligible providers. All partner staff shall continue to work together and use the systems and processes in place to serve the adult and dislocated worker populations, rather than using a parallel process that duplicates services available through the One-Stop system. Memoranda of Understanding between Local Boards and the Trade Act programs may serve as vehicles for articulating opportunities for coordination among programs. By concurrently enrolling these workers in multiple programs, a broader range of resources are available to the dislocated worker.

### **Benefits and Services**

#### **Reemployment Services**

Reemployment services are available to assist unemployed or partially unemployed workers at the local American Job Center. These reemployment services may include counseling, vocational testing, labor market information, job seeking assistance, job placement and supportive services. TAA individuals must be co-enrolled in the WIOA or Wagner-Peyser programs, and receive these services from WIOA or Wagner-Peyser.

#### **Job Search Allowances**

Job search allowances are payments made to enrolled TAA certified workers who are totally laid off and cannot obtain suitable employment within their commuting area. The allowance for reimbursement may equal 90% of necessary job search expenses, based on a per diem rate (transportation, hotel, meals), up to a maximum of \$1,250. This reimbursement to affected workers is paid for expenses incurred, while participating in a pre-approved job search program.

The cost allowable for lodging and meals shall not exceed the **lesser** of the actual cost to the individual of lodging and meals while engaged in the job search; or 50 percent of the

prevailing per diem allowance rate authorized under the Federal travel regulations (see 41 CFR part 101-7) for the locality where the job search is conducted.<sup>6</sup>

There are time limits for job search allowances. The application for the allowance needs to be filed before the later of the 365<sup>th</sup> day after the date of the certification or the 365<sup>th</sup> day after the date of the last total separation or the date that is the 182<sup>nd</sup> day after the date on which the worker concluded training. However, participants who receive a waiver are not eligible for job search eligibility for the 182 day period after training. The TAA certified worker must apply (file an application) and be approved before beginning his/her search for work outside the individual's normal commuting area. Authorization for the job search allowance is only for travel within the United States.

### **Relocation Allowances**

If the certified worker is successful in obtaining employment outside his/her normal commuting area, the TAA program offers financial assistance for the individual to relocate to the new area of employment. Outside the normal commuting area is defined as more than 25 miles one way using a web-based mapping service such as MapQuest from current address to new address.

When it is determined no suitable work is available in the certified worker's normal commuting area, a relocation allowance application may be approved if:

- the certified worker has obtained employment of long-term duration or a bona fide offer of such work in another area (must be in the United States); and
- the individual has not previously received a relocation allowance under the same certification; and
- the individual is totally separated from certified employment at the time of relocation. (Partially separated workers may apply in anticipation of total layoff.)

A relocation allowance pays 90% of the reasonable and necessary expenses of moving the certified worker, the worker's family, and household goods (not to exceed the weight limit authorized in Federal travel regulations) to the new location. Additionally, the certified worker will receive a lump sum payment equal to three times his/her average weekly wage, up to a maximum of \$1,250, to help them get settled.

An application for relocation allowance must be filed and approved by the Regional Manager before the individual moves.

There are time limits for filing an application for relocation allowances. The application for relocation allowance must be filed within 425 days after the date of certification or last total layoff, whichever is later or the date that is the 182<sup>nd</sup> day after the date on which the worker concluded training. However, participants who receive a waiver are not eligible for relocation eligibility for the 182 day period after training. The individual must begin to relocate within 182 days after applying for a relocation allowance, or within 182 days after completing approved training.

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<sup>6</sup> 20 CFR § 617.34(a)(2)

The cost allowable for lodging and meals for an individual or each member of the individual's family shall not exceed the **lesser** of the actual cost to the individual for lodging and meals while in travel status; or 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations (see 41 CFR part 101-7) for the locality to which the relocation is made.<sup>7</sup>

### **Waivers**

A TAA Waiver is a written statement to an adversely affected participant waiving the requirement to be enrolled in training and may be valid for a specified period of time between sixty days and no longer than six months at a time. The waiver must be reviewed every 28 days using the OET Waiver of Training Participation form (see Attachment A).

Waivers of training are a result of a finding that it is not feasible or appropriate to approve a training program for a worker because of one or more of the following reasons:

1. **Recall** - The worker has been notified in writing that he/she will be recalled by the firm from which the separation occurred.
2. **Marketable Skills** - The worker possesses marketable skills for suitable employment and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.
3. **Retirement** - The worker is within 2 years of meeting all requirements for entitlement to either old-age insurance benefits under Title II of the Social Security Act or a private pension sponsored by an employer or labor organization.
4. **Health** - The worker is unable to participate in training due to his/her health. A waiver of training due to health reasons shall not be construed to exempt the 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.
5. **Enrollment Unavailable** - The first available enrollment date for the approved training of the worker is within 60 days after the date of the "enrollment unavailable" determination, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.
6. **Training Not Available** - Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in Section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998, and employers), no training suitable for the worker is available at a reasonable cost, or no training funds are available.

A preliminary assessment of each trade affected worker's skills must be carried out to identify workers for whom immediate enrollment in training is appropriate. The completed assessment of pre-training skills must be included in each worker's case file. Except where such an assessment of a worker clearly indicates a need to enroll in training immediately, it is generally appropriate to seek a waiver request under the marketable skills condition. This waiver would allow some period of job search and avoid removing some workers prematurely from the labor force and investing training resources that may not be necessary to helping a worker obtain reemployment. In Nebraska, all waivers shall be reevaluated every 28 days for the duration of the waiver period. If the waiver is issued on the basis of marketable skills, the reevaluation will take into account the reasons the individual has been unable to obtain

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<sup>7</sup> 20 CFR § 617.46(a)(2)

employment during the job search. If the difficulty finding work is attributed to skill deficiencies, the waiver may need to be revoked with the worker immediately enrolled in training. Information related to waiver status shall be shared with the TRA benefit payment staff since changes may impact continued receipt of weekly benefits, if available.

Waivers are limited to a maximum duration of six months unless an extension is authorized by the State Trade Unit. This means a waiver issued during a worker's UI period often will not cover the worker's entire entitlement to basic TRA. In cases where it is necessary to cover the worker's full entitlement to basic TRA, the state may extend a worker's waiver beyond six months.

### Deadlines, Reviews, and Start Dates

For TAA participants not enrolled in a TAA approved training program, a waiver must be approved using the OET Waiver of Training Participation form and must be completed by the last day of the 8th week after the week in which the Secretary issues a certification covering the participant or the last day of the 16th week after the participant's most recent total separation from adversely affected employment, whichever is later.

All waivers must be signed by **both** the TAA applicant and by State Merit Staff. The waiver must have final approval or denial from State Merit Staff after acknowledgement of the applicant's signature. Subsequent reviews must be documented in NEworks under comments **every 28 days**.

The start date for all waivers shall be the date signed by the participant. This date must match the start date of the NEworks waiver "activity" and "entry".

It is **never** appropriate to back date a waiver. This is **strictly prohibited** and creates a false eligibility for TRA.

### Training

If there are no suitable jobs in the area and training would improve the chances of getting a job, the dislocated worker may be eligible for a training program under TAA. Training may only be approved on a full-time basis. Certified workers may not begin approved training until they have been totally or partially separated from adversely affected employment. Training opportunities may include vocational, technical, employer-based training, on the job training (OJT), customized training and remedial classroom training. When available, OJT is presented to trade-affected workers as a first option.

When a petition has been certified, funded training may be approved using TAA resources if the following six conditions are met:

- There is no suitable employment available now or in the foreseeable future.
- The worker would benefit from appropriate training and has the capabilities to successfully complete the training.
- There is a reasonable expectation of training-related employment following training completion.
- Approved training is reasonably available within the worker's commuting area.
- The worker is qualified to start and complete training successfully considering the worker's overall financial resources.

- Training is suitable and available at a reasonable cost. Training may not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers.

Each trade-affected worker must be provided the necessary information to enable them to make an informed choice among approvable training options, regardless of the worker's language or educational abilities. When a worker's education and language abilities are limited, careful case management at the training selection stage and during training is essential.

Workers who qualify for Trade Act training must be told of the 80% wage replacement goal and provided general information about available training programs, including access to labor market information, wage replacement information and web sites which may inform participants of the types of training available. Documentation to demonstrate that all of these requirements have been satisfied must be kept in the case file.

If the approved training meets all of the requirements of the Trade Act and regulations, including the requirement for the training to be available at a reasonable cost, a worker has a right to choose to enroll in higher cost training for an occupation that is more likely to meet the wage replacement goal of the Trade Act even when lower cost training in another occupation not meeting this goal is also available to the worker. The approved training program must be a program that provides the necessary skills to return the participant to work. Prior to training approval, each worker's case file must identify what occupation the worker is being trained to enter.

Suitable employment is work that is equal to or of a higher skill level than the worker's past adversely affected employment, and wages are not less than 80% of the worker's average weekly wage.

If training is approved, payment will be made through an Individual Training Accounts (ITA) voucher or directly to the school, unless training costs are paid or are reimbursable under another federal law. When individuals are enrolled in a TAA program, the maximum amount of funds expended for training costs shall not exceed \$14,000 per eligible participant. However, training options shall not be based solely on the state training cap. Exceptions to the limitation may be considered when the training requested is available at a reasonable cost and particularly suitable for the individual situation as demonstrated by back-up documentation provided by the local area. When an exception is being requested by the local area, the request and back-up documentation must be sent to the OE&T, Attention: Trade Coordinator. The final decision for either approval or disapproval of an exception is determined by the Nebraska Commissioner of Labor. This limitation also applies when co-enrollment is involved. Although through co-enrollment additional resources may be available, the total training costs shall not exceed \$14,000 per eligible participant. Local Boards have the option of determining what funding source to use to conduct allowable service activities. The cost of other services, i.e., allowable travel, relocation, job search assistance, etc. shall not be applied towards the training costs.

Locals are encouraged to select training providers that have met the qualifications necessary to be included in the statewide Eligible Training Provider List. Personal funds of the participant shall not be used to pay for any portion of his/her training program. Duplicate payment of training cost is prohibited. It is not appropriate to use Trade Act funds to pay for the development of a training provider or program, curriculum development, teacher training or physical plant needs.

If training is not within 25 miles of home [one way using map miles], supplemental assistance is available for transportation cost based on the prevailing federal per diem mileage rates, under the federal regulations. A printout from a web-based mapping service such as MapQuest of the route traveled by the participant must be included in his/her file to document the mileage. The mileage printout must be submitted every time a mileage request is made for supplemental assistance funds.

The cost allowable for lodging and meals for an individual attending training at a location exceeding 25 miles from his/her home, shall not exceed the **lesser** of the individual's actual per diem expenses for subsistence; or 50 percent of the prevailing per diem rate authorized under Federal travel regulations (see 41 CFR part 101-7) for the locale of the training.<sup>8</sup>

Trade Act funds may be used for a participant's "training consumables," i.e. paper, pens, calculators and other items that are training related and directly support the completion of the course. The participant will need to provide documentation of the need for the training consumables requested. This requirement may be completed by the submission of a course syllabus or email from a professor outlining needed items. The amount used to purchase training consumables may not exceed \$50 per training term and must be included in, and not in addition to, the \$14,000 training cap. Exceptions to the limitation may be considered with appropriate justification and documentation and must be approved by the Office/Regional Manager. For payment processing purposes all receipts must be kept and signed by the participant for all training consumables purchased.

### **Income Support and TRA Payments**

Individuals may be eligible for Trade Readjustment Assistance (TRA) payments which are additional weekly dollars, issued after the unemployment insurance weekly benefits are exhausted. In order to qualify for TRA, a worker must be enrolled in training (or have a waiver of training) within 16 weeks of his/her most recent total qualifying separation, or within 8 weeks of the issuance of the certification, whichever is later. This training enrollment deadline often referred to as the "8/16 week deadline" applies to eligibility for all TRA, both basic and additional TRA.

**[Note:** In determining a worker's TRA eligibility, the requirement that workers be either enrolled in approved training or covered by a training waiver in order to receive TRA does not apply for weeks that occur prior to the training enrollment deadline.] In many cases, the 8/16 week deadline for a worker will be reached while the worker is still receiving unemployment insurance (UI). Since some workers are not aware that this deadline may apply before they exhaust their UI, workers are to be informed of these requirements. Nebraska may grant an extension to the 8/16 week deadline for enrollment for up to 45 days if there are extenuating circumstances. "Extenuating circumstances" are situations that could arise when training

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<sup>8</sup> 20 CFR § 617.27(b)

programs are abruptly cancelled or where the first available enrollment date is past the end of the 60-day period, as well as in cases where a worker suffers injury or illness that adversely affects the worker's ability to enroll in training, or other events where the state can justify and document the application of extenuating circumstances is warranted. An extension of 45 days for extenuating circumstances shall only be granted through the Office of Employment and Training at the Nebraska Department of Labor. Entitlement to unemployment insurance includes regular unemployment compensation and Extended Benefits (EB) and Temporary Extended Unemployment Compensation (TEUC). If an individual is eligible to receive EUC payments, this is received in lieu of Basic TRA benefits.

Before TRA can be paid, all UI benefits must have been exhausted. Since eligibility for TRA shall be determined by the TRA benefit staff, it is recommended the individual going into training apply for TRA when his/her UI claim is filed. If the certified worker (with a qualifying separation) is not approved for TRA, they still remain eligible to apply for other TAA services.

The Unemployment Insurance staff at the Claim Center in Lincoln at 402-458-2500 shall advise individuals from certified companies on how to apply for TRA benefits. The TRA payments are intended only for workers who are enrolled in approved full time training unless a waiver has been granted.

In order to receive payment of TRA for any week of unemployment, the worker must be adversely affected, be covered by a group certification, apply for TRA payments in a timely fashion; and meet all of the following requirements:

1. The worker's first qualifying separation from affected employment must have occurred after the impact date and before the termination date of the certification.
2. During the 52 week period ending with their qualifying week of separation, the worker must have been employed at least 26 weeks at wages of \$30 or more per week in an affected job.
3. The worker must have exhausted all UI benefits.
4. The worker must be enrolled in TAA approved training, be academically successful, and provide appropriate school documentation at regular intervals. "Enrolled in training" means the worker's application for training has been approved by the Regional Manager and the training institution has furnished written notice to the Regional Manager that the worker has been accepted into the approved program which is to begin within 30 days of such approval. A waiver of training may be granted if appropriate. **[Note:** In determining a worker's eligibility, the requirement that workers be either enrolled in approved training or covered by a training waiver in order to receive TRA does not apply for weeks that occur prior to the training enrollment deadline.]

For those who qualify for TRA benefits, their eligibility for **Basic TRA benefits** is the 104-week period (or, in the case of an adversely affected worker who requires a program of remedial education in order to complete training approved for the worker, the 130-week period) beginning with the first week, which follows the week of their most recent total separation within the certification period. This does not mean the individual receives TRA benefits for 104 weeks. The maximum amount of TRA benefits an individual may receive during this period is limited to 52 times his/her weekly TRA amount minus all UI benefits the

individual was entitled to receive. UI and TRA payments combined are limited to a maximum of 52 weeks. TRA is not payable to workers participating in on-the-job training.

**Additional TRA** are weekly benefits paid to eligible workers to help them complete their TAA approved training program. Under the TAA program, individuals may be eligible to receive up to 52\* additional weeks of TRA benefits if they apply for TAA approved training within 210 days (7 months) after the date of certification or the date of their most recent qualifying separation, whichever date is later. These dollars are only available if they are participating in a TAA approved training program. Since the 210-day deadline may pass if a worker has a long-term waiver of the training requirement, it is important to inform workers of this deadline. For example, if a worker receives a waiver 16 weeks after the worker's most recent qualifying separation and that waiver remains in effect for the maximum 26 weeks, then a total of 42 weeks (294 days) might pass without the worker being required to be enrolled in approved training. If the worker does not file a *bona fide* application for training during this 210-day period, the worker is ineligible for additional TRA.

\*For a worker who must undergo remedial education as part of the worker's retraining plan, the maximum number of weeks of additional TRA is 78, or 26 more than the maximum for workers who do not participate in remedial education. Remedial education is defined as training in the elementary skills that every worker must have in order to achieve basic reemployability. Remedial training should be considered pre-vocational; that is, it leads to occupational, on-the-job, or customized training that will equip the participant with specific job skills. Wherever practical, remedial training should be conducted concurrently with the early parts of occupational training. Examples of remedial education are basic writing and mathematical skills training, English as a Second Language (ESL), and courses leading to a G.E.D.

While participating in training, individuals may experience a break in their training and still receive basic and additional benefits if:

- the break from school does not exceed 30 days; and
- the individual was in training prior to the break and returned immediately after the break; and
- the break was part of the school/training schedule.

When individuals are on break from school, even though they are not receiving the weekly dollars, the weeks will be counted against the 52-week eligibility for Additional TRA.

TRA benefits may be denied, IF:

- The individual does not file an application within the specified time frame.
- The individual fails to make satisfactory progress in his/her training program.
- The individual no longer attends school and has not shown good cause, as defined by Trade regulations. The Trade Unit determines good cause and issues written approval or denial of the good cause.
- The individual fails to report wages for any week where benefits are claimed.

### **Supportive Services**

Supportive services include services such as transportation, child care, dependent care, housing, and needs-related payments that are necessary to enable an individual to

participate in services authorized under WIOA Title I.<sup>9</sup> Local Boards, in consultation with the American Job Center partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area to ensure non-duplication of resources and services, as well as any limits on the amount and duration of such services.

### **Overpayments**

If an individual fails, with good cause, to complete training, a job search, or a relocation, any payment made from TAA funds to such individual or any person that is not properly and necessarily expended in attempting to complete such training, job search, or relocation, shall constitute an overpayment.

If an individual fails, without good cause, to complete training, a job search, or a relocation, any payment made from TAA funds to such individual or any person shall constitute an overpayment.

## **Appeal Rights**

### **Regarding Petitions**

Any worker, group of workers, certified or recognized union, or authorized representative of such worker or group, whose petition for TAA has been denied by USDOL may file an application for reconsideration of the determination by USDOL within 30 days after publication of the determination in the Federal Register. The request must be in writing and include:

- Name(s), address(es), and telephone number of the applicant(s);
- Name or a description of the group of workers on whose behalf the application for reconsideration is filed;
- Name and case number of the determination complained of;
- A statement of reasons for believing the determination complained of is erroneous;
- If the application is based, in whole or in part, on facts not previously considered in the determination, such facts shall be specifically set forth;
- If the application is based, in whole or in part, on an allegation that the determination complained of was based on mistake of facts which were previously considered, such mistake of facts shall be specifically set forth; and
- If the application is based, in whole or in part, on an allegation as to a misinterpretation of facts or of the law, such misinterpretation shall be specifically set forth.

Mailing address is:

U.S. Department of Labor  
Division of Trade Adjustment Assistance  
Employment and Training Administration  
200 Constitution Avenue, N.W., Room N-5428  
Washington, DC 20210

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<sup>9</sup> WIOA Section 3(58)

For information call (202) 693-3560.

Not later than 15 days after receipt of the application for reconsideration, the certifying officer shall make and issue a determination granting or denying reconsideration. The determination regarding application for reconsideration shall be published in the Federal Register. If the determination is negative, it shall constitute a final determination for purposes of judicial review. If the determination is affirmative regarding application for reconsideration, the group of workers or other persons showing an interest in the proceedings may make written submissions within 10 days after publication of the notice to show why the determination under reconsideration should or should not be modified. Not later than 45 days after reaching an affirmative determination regarding application for reconsideration, the certifying officer shall make a determination on the reconsideration. The determination on the reconsideration shall be published in the Federal Register.

### **Regarding Individual Services**

When a petition has been certified but the individual is denied a specific TAA service, such as training, travel, relocation etc., the individual has the same appeal rights as those provided under the state unemployment compensation law. Appeal rights are described on each form signed by the participant. Those rights are: "If you feel this determination is incorrect, you have a right to a hearing before an Appeal Tribunal; provided you file a timely notice of appeal by letter which must clearly state (1) you are appealing and (2) the reasons why you believe this determination is incorrect. Your notice of appeal and such reasons must be received within 20 days after this determination is mailed." Whenever someone appeals a decision concerning his/her TAA benefits, the individual has a right to be represented by his/her union, lawyer, or other person to help present the facts.

### **Program Evaluation**

The Trade Coordinator shall monitor TAA program participants. The methodologies employed to place program participants shall be considered as a part of the overall program evaluation.

### **Coordination**

The State Trade Unit and Trade Readjustment Allowance benefit staff shall work together to meet data collection, storage, and reporting requirements. To reinforce the pursuit of the program performance goals and ensure clear and uniform procedures are followed, state performance management training or meetings shall be held and include participation of State Trade Coordinator and TRA benefit staff. The State Trade Unit shall capture and report information related to a participant's ongoing participation in training or waiver status to the TRA benefit payment staff.

### **Merit Staffing**

Under 20 CFR Part 618, USDOL "requires that personnel engaged in TAA-funded functions undertaken to carry out the worker adjustment assistance provisions must be state employees covered by a merit system of personnel administration." In TEGL No. 01-10, USDOL instructed states to implement the TAA program according to "new merit staffing provisions which were to become applicable to TAA-funded positions effective December 15,

2010, as codified at 20 CFR 618.890(b).” On December 29, 2010, President Obama signed into law the Omnibus Trade Act. Section 102 of the Omnibus Trade Act retroactively extended the deadline for states to implement the merit-based state personnel staffing requirements contained in 20 CFR 618.890(a) from December 15, 2010, to no earlier than February 12, 2011. This requirement is now in effect. However, as clarified in the April 2, 2010 Federal Register, “there is nothing in this rule prohibiting the delivery, in appropriate circumstances, of employment and case management services to adversely-affected workers by staff funded by WIOA or other Federal programs through co-enrollment. As a partner in the One-Stop delivery system, the TAA program will continue to coordinate with the other partners in the system to ensure adversely-affected workers are provided access to a broad array of comprehensive services.”

### **Reporting**

The state shall submit quarterly Trade Act Participant Report (TAPR) data. The report shall include all active participants and all participants who have exited the program in the last 10 quarters. The “Program Exit” policy is applicable for participants co-enrolled in TAA and Dislocated Worker programs.

### **Alternative Trade Adjustment Assistance for Older Workers**

The Trade Adjustment Assistance Reform Act of 2002 establishes the Alternative Trade Adjustment Assistance (ATAA) Program as an alternative assistance program for older workers certified eligible for trade adjustment assistance. ATAA is designed to allow trade eligible workers for whom retraining may not be appropriate and who find reemployment, to receive supplemental payments to help bridge the salary gap between their old and new employment.

Under the ATAA program, workers in an eligible worker group who are at least 50 years of age and who obtain different, full-time employment within 26 weeks of separation from adversely-affected employment at wages less than those earned in the adversely-affected employment, may receive up to half of the difference between the workers’ old wage and the new wage. The supplement may be paid up to a maximum of \$10,000 during a two-year eligibility period. To be eligible for the ATAA program, workers must be certified as eligible to apply for TAA benefits and may not earn more than \$50,000 per year in the new employment. Workers who begin receiving payments under the ATAA program cannot receive other TAA benefits and services except for relocation allowances and HCTC. They are not eligible to receive training, TRA payments, and job search allowance if they have chosen to receive payments under the Alternative Trade Adjustment Assistance program. Reimbursement amounts will be rounded up to the next whole dollar.

In order to establish that petitioning workers are eligible to apply for the ATAA program, USDOL must first determine that all of the criteria for a regular TAA certification are met. In addition, USDOL must find that three additional criteria are met for ATAA certification. These additional criteria are:

1. A significant number of adversely affected workers in the petitioning workers' firm are 50 years of age or older;
2. The adversely affected workers in the petitioning workers' firm possess job skills that are not easily transferable to other employment; and
3. The competitive conditions within the affected workers' industry are adverse. After the issuance of a certification of eligibility to apply for TAA and ATAA and when the adversely affected worker is fully informed of the benefits and services available under the TAA and ATAA programs, the worker must consider the choice of benefits and services under one program or the other. If the worker's preferred option is the ATAA program, the worker should be encouraged to take advantage of reemployment services and assistance available to him/her with the goal of returning to work within 26 weeks of his/her qualifying separation in order to be eligible for ATAA. If the worker anticipates not being able to obtain a job within 26 weeks of such qualifying separation, the worker should contact their local Career Center immediately and consider seeking the TAA benefits to which the worker is entitled. While an adversely affected worker is seeking employment to qualify for the ATAA program, actions must be taken to ensure regular TAA deadlines are met and options are preserved.

### **Trade Adjustment Assistance for Farmers Program**

The Trade Adjustment Assistance for Farmers program helps farmers and fishermen respond proactively to import competition through training, cash benefits, and employment services.

#### **USDA Responsibilities**

When increased imports have contributed importantly to a price decline, the U.S. Department of Agriculture (USDA) provides technical assistance and cash benefits to eligible farmers and fishermen. Technical assistance to assist producers in exploring alternative crops and marketing techniques is accessed through the USDA's Cooperative State Research, Education, and Extension Service, in partnership with County Extension Services. To establish eligibility, a group of producers (three or more or an authorized representative) must first file a petition with the USDA's Foreign Agricultural Service. The Foreign Agricultural Service will certify producers' eligibility for adjustment assistance. Farm Service Agency county offices may help producers prepare and submit their applications.

#### **Department of Labor and State Workforce Agency Responsibilities**

Individuals entitled to a cash payment from the USDA under the TAA for Farmers program are also entitled to receive training and reemployment services under the TAA for Workers program administered by NDOL and the State Workforce Agencies (SWAs). The reemployment services provided to these individuals are governed by the same federal regulations, and are provided in the same manner and to the same extent as services provided to individuals covered under TAA certifications issued by DOL. Although individuals entitled to receive a cash payment from USDA under the TAA for Farmers program are also entitled to receive training under the TAA for Workers program, the individual must provide documentation of entitlement to cash benefits by providing a copy of his/her Form FSA-229, "Application for Trade Adjustment Assistance (TAA) for Individual Producers" signed by the approving official at the Farm Service Agency.

There are limitations on the selection and approval of the training. The following conditions are applicable:

1. The worker shall benefit from the training.
2. There is a reasonable expectation of employment once the training is completed.
3. Training approved by the Secretary must be reasonably available to the worker from either governmental agencies or private sources.
4. The worker must be qualified to undertake and complete the training.
5. The training must be suitable for the worker and available at a reasonable cost.
6. The costs of the training are allowable.
7. Applications related to training must be filed appropriately using the correct forms.
8. All determinations shall be subject to §617.50 and §617.51.
9. The length of training and hours of attendance shall meet the requirements discussed in 20 CFR 617.22(f) including;
  - The trainings shall be of suitable duration to achieve the desired skill level in the shortest possible time.
  - The maximum duration for any approvable training program is 104 weeks (during which training is conducted) and no individual shall be entitled to more than one training program under a single certification. [Except that individuals who require remedial education as part of their approved training program may receive up to an additional 26 weeks of training for a maximum duration of 130 weeks.]
  - A training program may consist of a single course or group of courses which is designed and approved by the state agency for an individual to meet a specific occupational goal.
  - An individual's approved training program may be amended by the state to add a course designed to satisfy unforeseen needs of the individual, such as remedial education or specific occupational skills, as long as the length of the amended training program does not exceed the limits discussed above.
  - Individuals in TAA approved training shall attend training full time and when other training is combined with on-the-job training, attendance at both shall be not less than full-time.
  - Full-time or part-time status in an approved training program is based on the established full-time certification policy of the institution where the training is being offered

Individuals entitled to a cash benefit under the TAA for Farmers program are not eligible for Trade Readjustment Allowances, job search allowances, relocation allowances, or the ATAA program for older workers.

**Disclaimer:**

This policy is based on NDOL's reading of WIOA and the WIOA Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

# ATTACHMENT A

## Waiver of Training Participation Form

Nebraska Department of Labor  
Office of Employment & Training Services  
**WAIVER OF TRAINING PARTICIPATION**

- THE TRADE ADJUSTMENT ASSISTANCE REFORM ACT OF 2002 (TAARA)** (Petitions 50,000 - 69,000)  
(The last day of the 8<sup>th</sup> week after the week in which the Secretary issues a certification covering the worker or the last day of the 16<sup>th</sup> week after the worker's most recent total separation from adversely affected employment, whichever is later.)
- TRADE AND GLOBALIZATION ADJUSTMENT ASSISTANCE ACT OF 2009 (TGAAA)** (Petitions 70,000 - 79,000)  
(The last day of the 26<sup>th</sup> week after the week in which the Secretary issues a certification covering the worker or the last day of the 26<sup>th</sup> week after the worker's most recent total separation from adversely affected employment, whichever is later.)
- TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011 (TAAEA)** (Petitions 81,000 - 84,000)  
(The last day of the 26<sup>th</sup> week after the week in which the Secretary issues a certification covering the worker or the last day of the 26<sup>th</sup> week after the worker's most recent total separation from adversely affected employment, whichever is later.)

Applicant's Name	Social Security Number(last 4) XXX-XX-	American Job Center or NDOL Location	Date
Petition Number	Impact Date	Certification Date	Expiration Date
<p><b>This Section to be completed for the Initial Waiver only.</b> The worker has met the Qualifying Requirements for Trade Readjustment Allowances (TRA), and the Enrollment in Training or Waiver from Training Requirement of Section 231(a)(5)(A) of the Trade Act of 1974 (19U.S.C. 229(a)(5)(A) as amended, which states: "the enrollment...occurs no later than the latest of:</p> <p>(I) the last day of the 8<sup>th</sup> or 26<sup>th</sup> week after the week in which the Secretary issues a certification covering the worker,</p> <p>(II) the last day of the 16<sup>th</sup> or 26<sup>th</sup> week after the worker's most recent total separation from adversely affected employment, or</p> <p>(III) forty-five (45) days after the later of the dates specified in (I) or (II), if there are extenuating circumstances that justify an extension of the enrollment period."</p> <p>This waiver is issued for the following reason(s) for <i>up to</i> a period of 6 months and <u>must</u> be reviewed every 28 days:            FROM _____ TO _____</p>			
Enrollment in training requirement may be waived for one or more of the following reasons apply:			
<input type="checkbox"/>	<b>HEALTH</b>	The applicant is unable to participate in training due to his/her health.	
<input type="checkbox"/>	<b>ENROLLMENT UNAVAILABLE</b>	The first available enrollment date for the applicant's approved training is within 60 days after the date of this waiver.	
<input type="checkbox"/>	<b>TRAINING NOT AVAILABLE</b>	Suitable training is not available: <input type="checkbox"/> at a reasonable cost <input type="checkbox"/> no training funds are available <input type="checkbox"/> not reasonably available from either governmental agencies or private sources	
<input type="checkbox"/>	<b>RECALL</b> (Not applicable for 2011)	Applicant has been notified that he/she will be recalled by the firm from which separation occurred. (File must contain written notice of recall from the company.)	
<input type="checkbox"/>	<b>RETIREMENT</b> (Not applicable for 2011)	Applicant is within two years of meeting all requirements for entitlement to: <input type="checkbox"/> Old-age insurance benefits under Title II of the Social Security Act <input type="checkbox"/> A private pension sponsored by an employer or labor organization	
<input type="checkbox"/>	<b>MARKETABLE SKILLS</b> (Not applicable for 2011)	Applicant has marketable skills for suitable employment. There is reasonable expectation of employment at equivalent wages in the foreseeable future.	
<p><b>REVOCAION:</b> This waiver shall be revoked when it is determined the reason specified above is no longer applicable. Failure to report may cause interruption of benefits or revocation of this waiver.</p>			
<p><b>CERTIFICATION:</b> I understand in order to receive weekly Basic Trade Readjustment Allowances (TRA) while on a waiver I must make a systematic and sustained search for work, which is a minimum of 3 contacts per week, and keep accurate records of such search. I further understand the law provides penalties for willful misrepresentation made to obtain benefits and allowances to which I am not entitled. Failure to follow instructions on the 28-day waiver reviews or appointments may result in loss of Basic TRA benefits.</p>			
<p><b>APPEAL RIGHTS:</b> If you feel this determination is incorrect, you have a right to a hearing before an Appeal Tribunal, providing you file a timely notice of appeal in writing, which must clearly state that you are appealing and the reasons why you believe this determination to be incorrect. Your notice of appeal and such reasons must be received at the office issuing this determination within twenty (20) days after the date this determination is mailed.</p>			
Applicant Signature			Date
Case Manager Signature			Date
State Merit Staff Management/State Trade Unit Signature			Date