

Chapter 11 – Waiver of TAA Training Deadline Requirement

The requirements to receive a Form TAA-802: *Waiver of Training Requirement* vary greatly dependent upon the TAA law for which the adversely affected worker is certified.

Please refer to the applicable TAA law outlined in the sections below for specific requirements for issuance of a waiver.

The MWAs are required to implement a TAA Waiver policy that describes local procedures for issuing, reviewing, extending, and revoking waivers.

Section 11-1: Waiver Overview (Applicable for each TAA Law)

Waivers and TRA Eligibility

Adversely affected workers deemed eligible for TAA may be eligible for weekly TRA, which is payable once state unemployment benefits and any extended benefits have been exhausted. TRA benefits include Basic TRA, Additional TRA, Remedial/Prerequisite TRA (TAA of 2002 and TGAAA of 2009 *only*), Completion TRA (TAAEA of 2011 and TAARA 2015 *only*). For specific TRA information including TRA eligibility periods and payable weeks, see Chapter 15 – TRA. The following qualifications apply to each type of TRA received:

- Basic TRA Weeks: Basic TRA benefits can be paid if the adversely affected worker is enrolled in training, qualifies for and receives a waiver of training, or has completed an approved training program. Work search requirements may still apply if not actively participating in training.
- Additional TRA Weeks: Additional TRA is only paid if the adversely affected worker is participating in an approved TAA training program.
- Remedial/Prerequisite TRA (TAA of 2002 and TGAAA of 2009 *only*): Remedial or Prerequisite TRA weeks are paid if the adversely affected worker has exhausted both Basic TRA and Additional TRA, and the MWA confirms that remedial or prerequisite courses have been taken.
- Completion TRA (TAAEA of 2011 and TAARA of 2015 *only*): Completion TRA weeks may be paid to adversely affected workers who have exhausted Basic TRA and Additional TRA, and are still enrolled in a TAA-approved training program if the MWA has verified that benchmark reviews have been successfully met (or a training modification has been made after a failed benchmark review).

Waiver Requirements

All adversely affected workers must receive a Comprehensive Assessment and complete an ISS before receiving a waiver of TAA training requirement. An ISS must be entered on the OSMIS and consist of, at a minimum, one Action Plan and one Employment Goal. The ISS should be updated throughout the adversely affected worker's TAA participation. A Comprehensive Assessment is an assessment of skill levels and service needs including diagnostic testing, in-depth interviewing, and evaluation to identify employment barriers and appropriate employment goals. The Comprehensive Assessment requirements may be met by providing a Reading and Math Assessment, along with an interest assessment (and/or in-depth interviewing).

Waivers in the OSMIS

In order to verify an adversely affected worker's continued eligibility for TRA, the TRA Unit may access the OSMIS to ensure that waiver reviews are conducted at least once every 30 days. The MWAs are required to enter the issuance, reviews, extensions, and revocation, of waivers into the OSMIS. Simultaneously, the waiver activities must be documented on the Form TAA-802: *Waiver of TAA Training Requirement*. The MWA officials must ensure that new waivers, and the results of waiver reviews, are immediately entered into the OSMIS to enable TRA staff to confirm continuing TRA eligibility. A training waiver is an activity that commences participation in the TAA program. Entering a training waiver into the OSMIS for a pending TAA adversely affected worker will convert the adversely affected worker to a TAA participant. It is very important to note this change in the OSMIS, as it will affect exiting and outcomes. Adversely affected workers with only a training waiver will be included in performance calculations.

If an adversely affected worker with an open TAA waiver was exited on the OSMIS, and it later becomes necessary to enter a new registration for that person, the same waiver can be continued in the new registration to preserve eligibility for Basic TRA. This applies to waivers that were not revoked or had not expired. It should be noted; however, that waivers should not have a period of inactivity greater than 90 days (waiver reviews must occur every 30 days). This may be used in rare circumstances only to preserve eligibility for Basic TRA.

Section 11-2: Waiver of TAA Training Requirement – TAA of 2002

Adversely affected workers must be enrolled in TAA-approved training by the deadline imposed under the TAA of 2002 guidelines to receive TRA. If the adversely affected worker does not start training within 30 days of the deadlines outlined below, a training waiver can be issued by the MWA to preserve eligibility for Basic TRA. Please refer to Chapter 8 – Training for additional information.

Prior to issuance of a waiver of TAA training requirement, adversely affected workers must complete and follow the steps below (each step is detailed in subsequent subsections):

- 1) Complete a comprehensive assessment and an ISS.
- 2) Meet the "8/16" rule deadline.
- 3) Meet one of the six waiver issuance reasons.

TAA of 2002 Waiver – Deadlines

Under the TAA of 2002, payment of TRA benefits require the adversely affected worker to be enrolled in training or receive a waiver from the training requirement, within the later of two dates (8/16):

- 1) The last day of the 8th week after issuance of the certification of eligibility covering the adversely affected worker, or
- 2) The last day of the 16th week after the adversely affected worker's most recent total qualifying separation.

*Note: The deadline will always fall on a Saturday.

Please Note: If an adversely affected worker has missed the "8/16" deadline, the MWAs are required to consider the following exceptions as allowed under the TAA of 2002, prior to issuance of a denial of Form TAA-802: *Waiver of TAA Training Requirement–TAA of 2002:*

*45-Day Extenuating Circumstances, or
*Equitable Tolling.

***Refer to Section 11-6: Exceptions to the Waiver Deadline – Applicable to all TAA Laws**

TAA of 2002 Waiver – Comprehensive Assessment and ISS Requirement

Prior to the issuance of the Form TAA-802: *Waiver of TAA Training Requirement–TAA of 2002*, the MWAs must verify that the adversely affected worker has completed a comprehensive assessment and an ISS prior to being issued a waiver. To ensure the "8/16" rule is met, the MWAs shall provide the adversely affected worker ample opportunity to complete the comprehensive assessment and the ISS in a timely manner.

The MWAs are not held to a particular comprehensive assessment system. The comprehensive assessment must include an assessment of the adversely affected worker's skills, aptitude, and abilities (including reading and math levels). The MWA should also determine, as part of the comprehensive assessment phase, the adversely affected worker's interests, skills, and experience as they relate to employment opportunities.

TAA of 2002 Waiver – Six Waiver Issuance Reasons

The waiver must be treated as an event triggered by the ISS and comprehensive assessment results, with such results matched to one of the appropriate waiver categories.

Subsequent to the adversely affected worker meeting the "8/16" rule deadline, and completion of the comprehensive assessment and an ISS, the MWA must evaluate the results and select one of the following six reasons for the issuance of a waiver most suited to the adversely affected worker:

- 1) Recall – The adversely affected worker has been notified that he/she will be recalled by the firm from which the separation occurred.
- 2) Marketable Skills – The adversely affected worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the adversely affected worker), and there is a reasonable expectation of employment in the foreseeable future.

- 3) Retirement – The adversely affected worker is within two years of meeting all requirements for entitlement to either:
 - a. Old-age insurance benefits under Title II of the Social Security Act (42 U.S.C. 401 et. seq.) (except for application, therefore); or
 - b. A private pension sponsored by an employer or labor organization.
- 4) Health – The adversely affected worker is unable to participate in training due to the health of the adversely affected worker, except that a waiver under this subparagraph shall not be construed to exempt an adversely affected 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 adversely affected worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the MWA.
- 6) Training Not Available – Training approved by the MWA is not reasonably available to the adversely affected worker from either governmental agencies or private sources (which may include area vocational education schools and employers), no training that is suitable for the adversely affected worker is available at reasonable cost, or no training funds are available.

TAA of 2002 Waiver – 30 Day Review Requirement

The Form TAA-802: *Waiver of TAA Training Requirement–Trade Act of 2002* must be issued for a six-month period of time allowed by the TAA of 2002 and reviewed at least once every 30 days until the waiver expires or is revoked due to enrollment into training, expiration, and/or non-compliance. The MWA may determine how adversely affected workers shall conduct waiver reviews. Waivers may be extended beyond the original six-month period of time in cases in which it is necessary to cover the adversely affected worker’s full entitlement to basic TRA. Waiver reviews must also be the result of, and be consistent with, intake and assessment results.

It is allowable to change the reason for the waiver during the waiver review process; however, it is very important that both the OSMIS and the Form TAA-802: *Waiver of TAA Training Requirement–Trade Act of 2002* reflect the same waiver reason.

If an adversely affected worker returns to work, the waiver should not automatically be revoked. However, a waiver may only be continued if one of the six waiver reasons still applies. A review must include a determination of the adversely affected worker’s training needs.

Just as with other adversely affected workers who have returned to work, waiver reviews can continue for National Guard personnel or military reservists who have been called to active duty. However, if it is not possible or feasible to continue reviews due to deployment overseas or other reasons, the waiver can be revoked. Upon return from active duty, military personnel who lost eligibility for TRA and/or TAA benefits due to deployment can qualify for the WIOA National Dislocated Worker Grant needs-related payments and training assistance.

TAA of 2002 Waiver – Expiration and Revocation of Waivers

The MWA must revoke a waiver once an adversely affected worker enrolls in TAA-approved training and may revoke it if it determines for other reasons that the basis for the waiver is no longer applicable to the adversely affected worker. However, once a waiver is revoked, it cannot be reissued unless the revocation is reversed by a redetermination or appeal. Therefore, waivers should only be revoked after all other alternatives have been exhausted. If a waiver is revoked, both the adversely affected worker and the TRA Unit must be notified in writing of this action. The waiver revocation is required to be faxed to the TRA Unit at 517-636-0427. A copy of the fax confirmation should be kept in the participant file.

A waiver must be revoked under the following circumstances:

- The adversely affected worker is enrolled in TAA-approved training, or
- The reason for the waiver no longer exists (see Waiver Review Section), or
- The adversely affected worker refuses to participate in waiver reviews (per local policy), or
- Basic TRA benefits have expired, or
- The 104-week eligibility period for Basic TRA has expired.

However, under no circumstance should a waiver be revoked without giving the adversely affected worker ample opportunity to participate in the review process. For example, a revocation should not occur without several attempts to contact the adversely affected worker in writing.

It is acceptable to allow a waiver to expire, but waiver reviews must continue until the expiration occurs.

An adversely affected worker has the right to protest a waiver revocation and must be advised of this right when notified of the action. Notification of a waiver revocation can be issued to the adversely affected worker in writing and with the Form TAA-802: *Waiver of TAA Training Requirement–Trade Act of 2002* or a locally designed document may be used. If using a locally designed document, the notification must include the language relating to protest rights contained on the waiver form.

Refer to Chapter 17–TAA Protest and Appeal Process for additional information.

Adversely affected workers must be enrolled in TAA-approved training by the deadline imposed under the TGAAA of 2009 guidelines to receive TRA. If the adversely affected worker does not start training within 30 days of the deadlines outlined below, a training waiver can be issued by the MWA to preserve eligibility for Basic TRA. Please refer to Chapter 8–Training for additional information.

Prior to issuance of a Waiver from the Training Requirement, adversely affected workers must complete and follow the steps below (each step detailed in subsequent subsections):

- 1) Complete a comprehensive assessment and ISS.
- 2) Meet the “26/26” rule deadline.
- 3) Meet one of the six waiver issuance reasons.

TGAAA of 2009 Waiver - Deadlines

Under the TGAAA of 2009, payment of TRA benefits require the adversely affected worker to be enrolled in training or receive a waiver of the TAA training requirement, within the later of two dates (26/26):

- 1) The last day of the 26th week after issuance of the certification of eligibility covering the adversely affected worker, or
- 2) The last day of the 26th week after the adversely affected worker's most recent total qualifying separation.

*Note: The deadline will always fall on a Saturday.

Please Note: If an adversely affected worker has missed the "26/26" deadline, the MWAs are required to consider the following exceptions as allowed under the TGAAA of 2009 prior to issuance of a denial of Form TAA- 802: *Waiver of TAA Training Requirement–TGAAA of 2009*:

- *45-Day Extenuating Circumstances, or
- *60 Days Post Notification, or
- *Good Cause, or
- *Equitable Tolling.

*Refer to Section 11-6: Exceptions to the Waiver Deadline – Applicable to all TAA Laws

TGAAA of 2009 Waiver–Comprehensive Assessment and ISS Requirement

Prior to the issuance of the Form TAA-802: *Waiver from Training Requirement–TGAAA of 2009*, the MWAs must verify that the adversely affected worker has completed a comprehensive assessment and an ISS prior to being issued a waiver. To ensure the "26/26" rule is met, the MWAs shall provide the adversely affected worker ample opportunity to complete the comprehensive assessment and the ISS in a timely manner.

The MWAs are not held to a particular comprehensive assessment system. The comprehensive assessment must include an assessment of the adversely affected worker's skills, aptitude, and abilities (including reading and math levels). The MWA should also determine, as part of the comprehensive assessment, the adversely affected worker's interests, skills, and experience as they relate to employment opportunities.

TGAAA of 2009 Waiver–Six Waiver Issuance Reasons

The waiver must be treated as an event triggered by the ISS and comprehensive assessment results, with such results matched to one of the appropriate waiver categories.

Subsequent to the adversely affected worker meeting the "26/26" rule deadline, completion of the comprehensive assessment and an ISS, the MWA must evaluate the results and select one of the following six reasons for the issuance of a waiver most suited to the adversely affected worker:

- 1) Recall – The adversely affected worker has been notified that he/she will be recalled by the firm from which the separation occurred.
- 2) Marketable Skills – The adversely affected worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the adversely affected worker), and there is a reasonable expectation of employment in the foreseeable future.

- 3) Retirement – The adversely affected worker is within two years of meeting all requirements for entitlement to either:
 - a. Old-age insurance benefits under Title II of the Social Security Act (42 U.S.C. 401 et. seq.) (except for application, therefore); or
 - b. A private pension sponsored by an employer or labor organization.
- 4) Health – The adversely affected worker is unable to participate in training due to the health of the adversely affected worker, except that a waiver under this subparagraph shall not be construed to exempt an adversely affected 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 adversely affected worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment as determined pursuant to guidelines issued by the MWA.
- 6) Training Not Available – Training approved by the MWA is not reasonably available to the adversely affected worker from either governmental agencies or private sources, (which may include area vocational education schools and employers). No training that is suitable for the adversely affected worker is available at a reasonable cost or no training funds are available.

TGAAA of 2009 Waiver–30 Day Review Requirement

The Form TAA-802: *Waiver of TAA Training Requirement–TGAAA of 2009* must be issued for a six-month period of time allowed by the TGAAA of 2009; and, reviewed at least once every 30 days until the waiver expires or is revoked due to enrollment into training, expiration, and/or non-compliance. The MWA may determine how adversely affected workers shall conduct waiver reviews. Waivers may be extended beyond the original six-month period in cases when it is necessary to cover the adversely affected worker’s full entitlement to basic TRA. Waiver reviews must also be the result of, and be consistent with, intake and assessment results.

It is allowable to change the reason for the waiver during the waiver review process; however, it is very important that both the OSMIS and the Form TAA-802: *Waiver of TAA Training Requirement–TGAAA of 2009* reflect the same waiver reason.

If an adversely affected worker returns to work, the waiver should not automatically be revoked. However, a waiver may only be continued if one of the six waiver reasons still applies. A review must include a determination of the adversely affected worker’s training needs.

Just as with other adversely affected workers who have returned to work, waiver reviews can continue for National Guard personnel or military reservists who have been called to active duty. However, if it is not possible or feasible to continue reviews due to deployment overseas, or other reasons, the waiver can be revoked. Upon return from active duty, military personnel who lost eligibility for TRA and/or TAA benefits due to deployment can qualify for the WIOA National Dislocated Worker Grant needs-related payments, and training assistance.

TGAAA of 2009 Waiver–Expiration and Revocation of Waivers

The MWA must revoke a waiver once an adversely affected worker enrolls in TAA-approved training and may revoke it if it determines for other reasons that the basis for the waiver is no longer applicable to the adversely affected worker. However, once a waiver is revoked, it cannot be reissued unless the revocation is reversed by redetermination or appeal. Therefore, waivers should only be revoked after all other alternatives have been exhausted. If a waiver is revoked, both the adversely affected worker and the TRA Unit must be notified in writing of this action. The waiver revocation is required to be faxed to the TRA Unit at 517-636-0427. A copy of the fax confirmation should be kept in the participant file.

A waiver must be revoked under the following circumstances:

- The adversely affected worker is enrolled in TAA-approved training, or
- The reason for the waiver no longer exists (see Waiver Review Section), or
- The adversely affected worker refuses to participate in waiver reviews (per local policy), or
- Basic TRA benefits have expired, or
- The 104-week eligibility period for Basic TRA has expired.

However, under no circumstance should a waiver be revoked without giving the adversely affected worker ample opportunity to participate in the review process. For example, a revocation should not occur without several attempts to contact the adversely affected worker in writing. It is acceptable to allow a waiver to expire, but waiver reviews must continue until the expiration occurs.

An adversely affected worker has the right to protest a waiver revocation and must be advised of this right when being notified of the action. Notification of a waiver revocation must be issued to the adversely affected worker in writing and with the Form TAA-802: *Waiver of TAA Training Requirement–TGAAA of 2009* or a locally designed document may be used. If using a locally designed document, the notification must include the language relating to protest rights contained on the waiver form.

Refer to Chapter 17–TAA Protest and Appeal for additional information.

Section 11-4: Waiver off TAA Training Requirement–TAAEA of 2011

Adversely affected workers must be enrolled in TAA-approved training by the deadline imposed under the TAAEA of 2011 guidelines to receive TRA. If the adversely affected worker does not start training within 30 days of the deadlines outlined below, a training waiver can be issued by the MWA to preserve eligibility for Basic TRA. Please refer to Chapter 8–Training for additional information.

Prior to issuance of a waiver of TAA training requirement, adversely affected workers deemed eligible under TAAEA of 2011 must complete and follow the steps below (each step detailed in subsequent subsections):

- 1) Complete a comprehensive assessment and ISS.
- 2) Meet the “26/26” rule deadline.
- 3) Meet one of the three waiver issuance reasons.

TAAEA of 2011 Waiver–Deadlines

Under the TAAEA of 2011, payment of TRA benefits require the adversely affected worker to be enrolled in training or receive a waiver from the training requirement, within the later of two dates (26/26):

- 1) The last day of the 26th week after issuance of the certification of eligibility covering the adversely affected worker, or
- 2) The last day of the 26th week after the adversely affected worker's most recent total qualifying separation.

*Note: The deadline will always fall on a Saturday.

Please Note: If an adversely affected worker has missed the "26/26" deadline, the MWAs are required to consider the following exceptions as allowed under the TAAEA of 2011, prior to issuance of a denial on Form TAA- 802: *Waiver of TAA Training Requirements–TAAEA of 2011*:

- *45-Day Extenuating Circumstances, or
- *60 Days Post Notification, or
- *Good Cause, or
- *Equitable Tolling.

*Refer to Section 11-6: Exceptions to the Waiver Deadline – Applicable to all TAA Laws

TAAEA of 2011 Waiver – Comprehensive Assessment and ISS Requirement

Prior to the issuance of the Form TAA-802: *Waiver of TAA Training Requirement–TAAEA of 2011*, the MWAs must verify that the adversely affected worker has completed a comprehensive assessment and an ISS prior to being issued a waiver. In an effort to ensure the "26/26" rule is met, the MWAs shall provide the adversely affected worker ample opportunity to complete the comprehensive assessment and the ISS in a timely manner.

The MWAs are not held to a particular comprehensive assessment system. The comprehensive assessment must include an assessment of the adversely affected worker's skills, aptitude, and abilities (including reading and math levels). The MWA should also determine, as part of the comprehensive assessment, the adversely affected worker's interests, skills, and experience as they relate to employment opportunities.

TAAEA of 2011 Waiver – Three Waiver Issuance Reasons

The waiver must be treated as an event triggered by the ISS and comprehensive assessment results, with such results matched to one of the appropriate waiver categories.

Subsequent to the adversely affected worker's completing the comprehensive assessment and an ISS, and meeting the "26/26" rule deadline, the MWA must evaluate the results, and select one of the following three reasons for the issuance of a waiver most suited to the adversely affected worker:

- 1) Health – The adversely affected worker is unable to participate in training due to their health, except that the basis for a waiver does not exempt the adversely affected worker from the "available to work, active work search, or refusal to accept work" requirements under Federal or State unemployment compensation laws.
- 2) Enrollment Unavailable – The first available enrollment date for the approved training of the adversely affected worker is within 60 days after the date of the determination made

under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment as determined pursuant to guidelines issued by the MWA.

- 3) Training Not Available – Training approved by the MWA is not reasonably available to the adversely affected worker from either governmental agencies or private sources (which may include area vocational education schools and employers), no training that is suitable for the adversely affected worker is available at reasonable cost, or no training funds are available.

Training waivers under the TAAEA of 2011 must not be issued unless the adversely affected worker meets and the case file documents, that one of the three criteria have been met. For the waiver reasons “Enrollment Unavailable” and “Training Not Available,” this includes documentation that progress toward entering training is continually made while the waiver is active. If an adversely affected worker ceases efforts to enter training without reasonable justification (or training is no longer feasible), the waiver must be revoked.

In the case of an adversely affected worker expressing interest in EBT, documentation that progress toward entering that training must be included in the case file. Examples of documentation include:

- Partnership between TAA and Business Services staff to identify EBT opportunities,
- Applications for employment for EBT opportunities, and/or
- Other efforts to enter EBT.

TAAEA of 2011 Waiver – 30 Day Review Requirement

The Form TAA-802: *Waiver of TAA Training Requirement–TAAEA of 2011* must be issued for a six-month period of time allowed by the TAAEA of 2011 and reviewed at least once every 30 days until the waiver expires or is revoked due to enrollment into training, expiration, and/or non-compliance. The MWA may determine how adversely affected workers shall conduct waiver reviews. Waivers may be extended beyond the original six-month period in cases when it is necessary to cover the adversely affected worker’s full entitlement to basic TRA. Waiver reviews must also be the result of, and be consistent with, intake and comprehensive assessment results.

It is allowable to change the reason for the waiver during the waiver review process; however, it is very important that both the OSMIS and the Form TAA-802: *Waiver of TAA Training Requirement–TAAEA of 2011* reflect the same waiver reason.

If an adversely affected worker returns to work, the waiver should not automatically be revoked. However, a waiver may only be continued if one of the three waiver reasons still applies. A review must include a determination of the adversely affected worker’s training needs.

Just as with other adversely affected workers who have returned to work, waiver reviews can continue for National Guard personnel or military reservists who have been called to active duty. However, if it is not possible or feasible to continue reviews due to deployment overseas or other reasons, the waiver can be revoked. Upon return from active duty, military personnel who lost eligibility for TRA and/or TAA benefits due to deployment can qualify for WIOA, National Emergency Grant needs-related payments, and training assistance.

TAAEA of 2011 Waiver – Expiration and Revocation of Waivers

The MWA must revoke a waiver once an adversely affected worker enrolls in TAA-approved training, and may revoke it if it determines for other reasons that the basis for the waiver is no longer applicable to the adversely affected worker. However, once a waiver is revoked, it cannot be reissued unless the revocation is reversed by redetermination or appeal. Therefore, waivers should only be revoked after all other alternatives have been exhausted. If a waiver is revoked, both the adversely affected worker and the TRA Unit must be notified in writing of this action. The waiver revocation is required to be faxed to the TRA Unit at 517-636-0427. A copy of the fax confirmation should be kept in the participant file.

A waiver must be revoked under the following circumstances:

- The adversely affected worker is enrolled in TAA-approved training, or
- The reason for the waiver no longer exists (see Waiver Review Section), or
- The adversely affected worker refuses to participate in waiver reviews (per local policy), or
- Basic TRA benefits have expired, or
- The 104-week eligibility period for Basic TRA has expired.

However, under no circumstance should a waiver be revoked without giving the adversely affected worker ample opportunity to participate in the review process. For example, a revocation should not occur without several attempts to contact the adversely affected worker in writing.

It is acceptable to allow a waiver to expire, but waiver reviews must continue until the expiration occurs.

An adversely affected worker has the right to protest a waiver revocation, and must be advised of this right when being notified of the action. Notification of a waiver revocation must be issued to the adversely affected worker in writing and the Form TAA-802: *Waiver of TAA Training Requirement–TAAEA of 2011* or a locally designed document may be used. If using a locally designed document, the notification must include the language relating to protest rights contained on the waiver form.

Refer to Chapter 17–TAA Protest and Appeal Process for additional information.

Section 11-5: Waiver of TAA Training Requirement–TAARA of 2015

Adversely affected workers must be enrolled in TAA-approved training by the deadline imposed under the TAARA of 2015 guidelines to receive TRA. If the adversely affected worker does not start training within 30 days of the deadlines outlined below, a training waiver can be issued by the MWA to preserve eligibility for Basic TRA. Please refer to Chapter 8–Training for additional information.

Prior to issuance of a waiver of TAA training requirement, adversely affected workers deemed eligible under TAARA of 2015 must complete and follow the steps below (each step detailed in subsequent subsections):

- 1) Complete a comprehensive assessment and ISS.
- 2) Meet the “26/26” rule deadline.
- 3) Meet one of the three waiver issuance reasons.

TAARA of 2015 Waiver - Deadlines

Under the TAARA of 2015, payment of TRA benefits require the adversely affected worker to be enrolled in training or receive a waiver from the training requirement within the later of two dates (26/26):

- 1) The last day of the 26th week after issuance of the certification of eligibility covering the adversely affected worker, or
- 2) The last day of the 26th week after the adversely affected worker’s most recent total qualifying separation.

*Note: The deadline will always fall on a Saturday.

Please Note: If an adversely affected worker has missed the “26/26” deadline, the MWAs are required to consider the following exceptions as allowed under the TAARA of 2015 prior to issuance of a denial of the Form TAA- 802: *Waiver of TAA Training Requirement–TAARA of 2015*:

*45-Day Extenuating Circumstances, or

*60 Days Post Notification, or

*Good Cause, or

*Equitable Tolling.

***Refer to Section 11-6: Exceptions to the Waiver Deadline – Applicable to all TAA Laws**

TAARA of 2015 Waiver – Comprehensive Assessment and ISS Requirement

Prior to the issuance of the Form TAA-802: *Waiver of TAA Training Requirement–TAARA of 2015*, the MWAs must verify that the adversely affected worker has completed a comprehensive assessment and an ISS prior to being issued a waiver. In an effort to ensure the “26/26” rule is met, the MWAs shall provide the adversely affected worker ample opportunity to complete the comprehensive assessment and the ISS in a timely manner.

The MWAs are not held to a particular comprehensive assessment system. The comprehensive assessment must include an assessment of the adversely affected worker’s skills, aptitude, and abilities (including reading and math levels). The MWA should also determine as part of the comprehensive assessment the adversely affected worker’s interests, skills, and experience as they relate to employment opportunities.

TAARA of 2015 Waiver – Three Waiver Issuance Reasons

The waiver must be treated as an event triggered by the ISS and comprehensive assessment results, with such results matched to one of the appropriate waiver categories.

Subsequent to the adversely affected worker's completing the comprehensive assessment and an ISS and meeting the "26/26" rule deadline, the MWA must evaluate the results and select one of the following three reasons for the issuance of a waiver most suited to the adversely affected worker:

- 1) Health – the adversely affected worker is unable to participate in training due to their health, except that the basis for a waiver does not exempt the adversely affected worker from the "available to work, active work search, or refusal to accept work" requirements under Federal or State unemployment compensation laws.
- 2) Enrollment Unavailable – The first available enrollment date for the approved training of the adversely affected worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment as determined pursuant to guidelines issued by the MWA.
- 3) Training Not Available – Training approved by the MWA is not reasonably available to the adversely affected worker from either governmental agencies or private sources (which may include area vocational education schools and employers), no training that is suitable for the adversely affected worker is available at reasonable cost, or no training funds are available.

Training waivers under the TAARA of 2015 must not be issued unless the adversely affected worker meets and the case file documents that one of the three criteria have been met. For the waiver reasons "Enrollment Unavailable" and "Training Not Available," this includes documentation that progress toward entering training is continually made while the waiver is active. If an adversely affected worker ceases efforts to enter training without reasonable justification (or training is no longer feasible), the waiver must be revoked.

In the case of an adversely affected worker expressing interest in EBT, documentation that progress toward entering that training must be included in the case file.

Examples of documentation include:

- Partnership between TAA and Business Services staff to identify EBT opportunities,
- Applications for employment for EBT opportunities, and/or
- Other efforts to enter EBT

TAARA of 2015 Waiver – 30 Day Review Requirement

The Form TAA-802: *Waiver of TAA Training Requirement–TAARA of 2015* must be issued for a six-month period of time allowed by the TAARA of 2015 and reviewed at least once every 30 days until the waiver expires or is revoked due to enrollment into training, expiration, and/or non-compliance. The MWA may determine how adversely affected workers shall conduct waiver reviews. Waivers may be extended beyond the original six-month period in cases when it is necessary to cover the adversely affected worker's full entitlement to basic TRA. Waiver reviews must also be the result of, and be consistent with, intake and comprehensive assessment results.

It is allowable to change the reason for the waiver during the waiver review process; however, it is very important that both the OSMIS and the Form TAA-802: *Waiver of TAA Training Requirement–TAARA of 2015* reflect the same waiver reason.

If an adversely affected worker returns to work, the waiver should not automatically be revoked. However, a waiver may only be continued if one of the three waiver reasons still applies. A review must include a determination of the adversely affected worker's training needs.

Just as with other adversely affected workers who have returned to work, waiver reviews can continue for National Guard personnel or military reservists who have been called to active duty. However, if it is not possible or feasible to continue reviews due to deployment overseas or other reasons, the waiver can be revoked. Upon return from active duty, military personnel who lost eligibility for TRA and/or TAA benefits due to deployment can qualify for the WIOA National Dislocated Worker Grant needs-related payments and training assistance.

TAARA of 2015 Waiver – Expiration and Revocation of Waivers

The MWA must revoke a waiver once an adversely affected worker enrolls in TAA-approved training and may revoke it if it determines for other reasons that the basis for the waiver is no longer applicable to the adversely affected worker. However, once a waiver is revoked, it cannot be reissued unless the revocation is reversed by redetermination or appeal. Therefore, waivers should only be revoked after all other alternatives have been exhausted. If a waiver is revoked, both the adversely affected worker and the TRA Unit must be notified in writing of this action. The waiver revocation is required to be faxed to the TRA Unit at 517-636-0427. A copy of the fax confirmation should be kept in the participant file.

A waiver must be revoked under the following circumstances:

- The adversely affected worker is enrolled in TAA-approved training, or
- The reason for the waiver no longer exists (see Waiver Review Section), or
- The adversely affected worker refuses to participate in waiver reviews (per local policy), or
- Basic TRA benefits have expired, or
- The 104-week eligibility period for Basic TRA has expired.

However, under no circumstance should a waiver be revoked without giving the adversely affected worker ample opportunity to participate in the review process. For example, a revocation should not occur without several attempts to contact the adversely affected worker in writing.

It is acceptable to allow a waiver to expire, but waiver reviews must continue until the expiration occurs.

An adversely affected worker has the right to protest a waiver revocation and must be advised of this right when being notified of the action. Notification of a waiver revocation must be issued to the adversely affected worker in writing and the Form TAA-802: *Waiver of TAA Training Requirement–TAARA of 2015* or a locally designed document may be used. If using a locally designed document, the notification must include the language relating to protest rights contained on the waiver form.

Refer to Chapter 17–TAA Protest and Appeal Process for additional information.

Section 11-6: Exceptions to the Waiver Deadline – Applicable to All TAA Laws

Overview

Each TAA law clearly defines the deadline for application for a waiver from training (“8/16” or “26/26”) and other benefits available to adversely affected workers. The waiver deadlines imposed by each TAA law require adversely affected workers to make every effort to meet the time-limit requirements. However, in certain circumstances adversely affected workers, through no fault of their own, do not meet the deadline of application. In instances where the adversely affected worker has missed the deadline imposed by the applicable TAA law, the MWAs are required to consider each of the following exceptions to the application deadline.

Exceptions to the Waiver Deadline – Definitions

45-Day Extenuating Circumstance – Adversely affected workers who did not meet the “8/16” or “26/26” deadline as imposed by the applicable TAA law for which the adversely affected worker has been certified due to extenuating circumstances but applied within 45 days from that period, may be granted the waiver. Extenuating circumstances are unusual situations that are beyond the direct control of the adversely affected worker, and that make enrollment within the otherwise applicable deadline impossible or impractical.

60-Day Post Notification – This exception may be applied to adversely affected workers who did not meet the “26/26” week deadline as imposed by the applicable TAA law for which the adversely affected worker has been certified because they were not notified of the TAA benefits. However, upon notification applied for the waiver within 60 days. If applied, the MWAs must document efforts to notify all workers. Reasons to apply this exception are as follows:

- 1) Due to the MWA or company error, or
- 2) Name did not appear on list provided by employer, or
- 3) Temporary Agency employees not included on layoff list.

Good Cause – This exception allows for an MWA to consider the following factors when time limitations of TRA or enrollment in training have not been met, as imposed by the applicable TAA law for which the adversely affected worker has been certified:

- 1) Whether the adversely affected worker acted in the manner that a reasonably prudent person would have acted under the same or similar circumstances.
- 2) Whether the adversely affected worker received timely notice of the need to act before the deadline passed.
- 3) Whether there were factors outside the control of the adversely affected worker that prevented the worker from taking timely action to meet the deadline.
- 4) Whether the adversely affected worker’s efforts to seek an extension of time by promptly notifying the MWA were sufficient.
- 5) Whether the adversely affected worker was physically unable to take timely action to meet the deadline.
- 6) Whether the adversely affected worker’s failure to meet the deadline was due to the employer warning, instructing, or coercing of 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 adversely affected worker's failure to meet the deadline was due to the worker reasonably relying on misleading, incomplete, or erroneous advice provided by the MWA.
- 8) Whether the adversely affected worker's failure to meet the deadline was due to the MWA failing to perform its affirmative duty to provide advice reasonably necessary for the protection of their entitlement to TRA.
- 9) Whether there were other compelling reasons or circumstances that would prevent a reasonable person under the circumstances presented from meeting a deadline for filing an application for TRA or enrolling in training including:
 - a. Neglect, a mistake, or administrative error by the MWA.
 - b. Illness or injury of the adversely affected worker or any member of the adversely affected 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, 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 adversely affected worker's native language and the worker has a limited understanding of English.
 - h. The loss or unavailability of records due to a fire, flood, theft or another similar reason. Adequate documentation of the availability of the records includes a police, fire, or insurance report, containing the date of the occurrence and the extent of the loss or damage.

Equitable Tolling – The equitable tolling of a deadline *only* applies in circumstances in which a deadline was missed through no fault of the adversely affected worker, and the MWA has found that due diligence in taking all necessary actions to protect their eligibility for TAA benefits upon notification of the applicable deadline has been demonstrated. Reasons equitable tolling may be applied are when the adversely affected worker was not:

- 1) Included on a layoff list, or
- 2) Notified by the MWA of the TAA certification, or
- 3) Invited to the WBO.

Exceptions to the Waiver Deadline – Supporting Documentation

In cases where the adversely affected worker has missed the deadline to file a waiver of the training requirement, the MWAs are required to document on the Form TAA-802: *Waiver of TAA Training Requirement* that consideration of applicable exceptions were considered. Because each of the exceptions to the missed waiver deadline does not apply to all of the TAA laws, the applicable Form TAA-802: *Waiver of TAA Training Requirement* specific to the appropriate law, will specify which exceptions are to be considered.

Exceptions to the Waiver Deadline – Denial of a Waiver

If the deadline exceptions are not applicable to grant a waiver beyond the imposed deadline, the MWA must issue a denied waiver. The denial must be issued to the adversely affected worker in writing, and a copy included in the case file. The MWA should indicate on Form TAA-802: *Waiver of TAA Training Requirement* that deadline exceptions were considered but not applicable. Adversely affected workers may protest a denied waiver as outlined in Chapter 17–TAA Protest and Appeal Process.