

MARYLAND WORKFORCE DEVELOPMENT SYSTEM

Maryland Policy Issuance

Policy Issuance No. 04-2014 **Policy** **Information** **Guidance**

To: Labor Exchange Administrators
Trade Program Staff

cc: WIA State Partners

From: Julie Squire, Assistant Secretary, 
Department of Workforce Development and Adult Learning

Date: February 28, 2014

Effective Date: April 4, 2014

Expiration Date: Until rescinded

GWIB Approval Date: N/A

Authority: The Trade Act of 1974, As Amended, Trade Adjustment Assistance Reform Act of 2002 and Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009 section 1821; Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) Section 212(a)(C) (1) (A,B, C), TEGL No. 22-08, TEGL No.10-11; Sunset Provisions of the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011 TEGL 7-13 C.7.

Subject: Issuance and Review of Trade Program Training Waivers

Background: President Obama signed the Trade and Globalization Adjustment Assistance Act of 2009 on February 17, 2009. This new law was part of the American Recovery and Reinvestment Act of 2009, which is referred to as the "stimulus bill". On October 21, 2011, the Trade Adjustment Assistance Extension Act of 2011 provisions was enacted. This Act amended the Trade Adjustment Assistance program, by restoring (with some exceptions) the expanded certification criteria, benefits and services provided under the Trade and Globalization Adjustment Act of 2009. On December 27, 2013 the Sunset Provisions of the Amendments to the Trade Act of 1974 was issued which gave further guidance on the current status of the Trade program..

Purpose: The purpose of this field instruction is to establish a policy on issuing and the review of Training Waivers under the Trade program. TEGL 22-08 C.3 outlines the review of the waivers and TEGL 10-11 C.5 reduces the number of waivers to Health, Enrollment not available, and Training not available.

Procedure:

If issuing a waiver other than for the near retirement reason is appropriate the first waiver should be issued for no longer than 90 days except in the case where first available training waiver is being used. If subsequent waivers are appropriate the maximum they should be issued is 30 days. Prior to the end of the 90 or 30 day waiver a review must be conducted with the Trade impacted individual to ensure the reason for the waiver is still valid. This process has been established to ensure conditions for a waiver remain valid and timelines established for a review are met. If the reason for the waiver is still valid an additional waiver will be issued for the appropriate time as listed above. If a waiver is issued for near retirement, it will be for the appropriate amount of time the individual has indicated until their retirement with a maximum of 6 months.

Note: Once a waiver is issued, a waiver for a different reason cannot be issued unless the circumstances surrounding the Trade impacted worker changes. The reason for the waiver cannot be changed solely for the sake of allowing an individual to continue to collect a Trade benefit.

Any waiver issued will be supported with appropriate back up documentation. A medical waiver should be supported with documentation from a medical professional. The documentation does not have to state the medical condition that is the basis of the waiver. It will indicate the estimated time an individual would be unable to pursue training.

If a waiver is issued for delay in first available training, the waiver will be established for the period of time from when training is approved to the day before training begins. In order to issue this waiver, training must be established, approved by the Dislocation Services Office and accepted by the training provider.

A waiver being issued for training not available or training not available at a reasonable cost will be documented with a statement to the appropriate condition from the Dislocation Services Unit. This waiver will not be issued until the appropriate documentation has been received.

A subject to recall waiver will be supported with an official written document from the company indicating the Trade impacted worker is on recall status and has an estimated date of when the worker would return to work. If the length of time needed for this waiver is less than the 90 days or 30 days maximum length described above, the waiver will only be issued for the amount of time between issuing the waiver and the return to work date indicated on the documentation from the employer.

To issue a marketable skills waiver, evidence will be provided by the trade impacted worker that indicates the skills and abilities required for the type of employment they are attempting to gain and evidence should be supplied indicating that the worker has the skills required. This evidence could be a license, certification or documentation of obtaining educational levels. In cases where it is not possible to document skills and abilities in ways listed above, the Trade impacted worker will complete a self-attestation document (attached with this policy) indicating they have specified skills to the level where they can compete for current open job opportunities.

To document a waiver for near retirement, the Trade impacted individual will sign the self-attestation document (attached to this form) indicating they intend to retire within the next two years. Please note retirement is not necessarily based on an individual's age. This does not guarantee an individual will receive funds under the Trade act for the period of time from issue of the waiver until retirement.

Depending on regulations that govern a specific Trade approval, not all waiver conditions are available to all Trade participants. Below is a listing of waivers available to participants according to the petition number.

TRADE PETITION NUMBER	WAIVERS AVAILABLE TO PARTICIPANTS
TA-W-69,999 and below (2002 Amendments)	1-Subject to recall within 6 months 2-Possesses marketable skills 3-Poor health 4-Near retirement 5-Delay in 1 st available enrollment date 6-Training funds not available
TA-W-70,000 through 79,999 (2009 Amendments)	1-Subject to recall within 6 months 2-Possesses marketable skills 3-Poor health 4-Near retirement 5-Delay in 1 st available enrollment date 6-Training funds not available
TA-W-80,000 through 80,999	Participant would be bound by 2002 or 2011 amendments depending on choice made by participant
TA-W-81,000 through 84,999 (2011 Amendments)	1-Poor health 2-Delay in 1 st available enrollment date 3-Training funds not available
TA-W-85,000 and above (2002 Amendments with TAAEA sunset provisions)	1-Poor health 2-Delay in 1 st available enrollment date 3-Training funds not available

A waiver, for any reason, can only be issued for Basic TRA benefits and does not apply to Additional TRA.

Effective Date: The procedures listed in this policy should take place with the issuance of all new waivers after this policy is released.

Action Required by Trade Staff:

In order to issue a waiver an individual must first be enrolled in the Trade program and requesting a waiver from the training requirement in the Trade program. To determine if a waiver is appropriate the following conditions should be applied when considering each type of waiver.

1-Worker Subject to Recall within 6 months-To issue this waiver the individual must have documentation from the company that they are subject to being recalled to work within 6 months from the date of layoff.

2-Worker Possesses Marketable Skills-To issue this waiver, their needs to be evidence of current job openings in the local labor market and the individual must possess the skills and qualifications stipulated by the potential employers. The individual's file should contain the position openings with the skills needed listed and documentation from the individual that they have the skills. This documentation could be in the form of certifications, documentation of academic achievement or self- attestation that they have the skills needed to compete for the positions listed in the local job market.

3-Worker in poor health-To issue this waiver the individual must provide documentation from a medical professional indicating that they are not able to attend training, They must be healthy enough to maintain the job search requirements issued by the Division of Unemployment Insurance. Be advised that medial issue does not mean that they qualify for this waiver. The medical issue must prevent the individual from attending training, this means that the medical condition must make it so the individual cannot perform one or more of the tasks required to attend training.

4-Worker near retirement-To issue this waiver the individual must self- attest that they are within 2 years of retirements from the their last day of employment. Note this waiver does not require that the individual be of a certain age.

5-Delay in first available enrollment date for training-To select this waiver training must be approved by the Dislocation Services Unit and accepted by the training institution. The date for the waiver should be the date that the training has been approved to the day before the start of the approved training. Please note that when the training starts a new form should be filled out and submitted as normal indicating that the individual is in training.

6-Training Not Available-To issue this waiver the training request and back up documentation must be submitted to the Dislocation Services Unit and a statement will be issued back indicating that the training is not available.

The implementation of this policy requires local offices to document the action of issuing a waiver by applying a service and entering case notes in the Maryland Workforce Exchange (MWE) indicating a waiver from Trade training was either issued or renewed. In the case where the waiver might change the individual's Employment Plan, the plan should also be adjusted and the adjustment recorded in the case notes in MWE. The documentation for any of the waivers, along with a copy of the waiver should be filed in the individual's master file and a copy of the waiver should be sent to the Dislocation Services Unit and to the Special Programs Unit of the Division of Unemployment Insurance. The waivers and supporting documentation should be kept in the individual's master file and kept in a manner so the current waiver is on top and all past waivers are in chronological order behind the current one.

A copy of the completed waiver indicating issuance or denial should be given to the Trade impacted worker and an explanation of the status should be provided to assure that the individual understands their status. At the same time, the appeals rights section of the waiver should be reviewed. If the individual would like to appeal a decision a written appeal would need to be filed with the individual issuing the decision within 15 days. Once this appeal is received it will be reviewed by the appropriate officials and a written decisions will be issue.

If a wavier should need to be revoked during the period stated on the document, the individual would receive a written document indicating that the waiver has been revoked and the reason for the revocation would clearly be stated in the document and appeals rights would be included. The appeals rights would allow the individual 15 days from the date of the document to appeal the decision in writing. Any appeal would be responded to within 15 days to determine the validity of the appeal.

If a waiver needs to be renewed/reviewed, the Trade impacted worker must come in to the One Stop and meet with a staff member. During this meeting documents provided by the Trade impacted worker will be reviewed. If the documents condition for the waiver continues to exist, then a new waiver should be fully completed with the expiration date of the waiver being no more than 30 days or no longer than prescribed in the documentation for the waiver if the time frame is less than 30 days.

To ensure that waivers are being issued correctly and in a timely fashion to meet the regulations, during the quarterly monitoring, the selected files will be reviewed for compliance with this policy. If any evidence is uncovered that the policies or regulations for issuing waivers is not being followed, the specific findings will be noted and brought to the attention of the Labor Exchange Administrator (LEA) that is in charge of the One Stop where the violations occurred. Based on the findings, training could be set up for individual staff members who seem to need additional guidance, all of the individuals issuing waivers at a particular One Stop or for everyone involved with the issuing of waivers in the state.

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Attachments:

1. Self-attestation form to help support the Marketable Skills Waiver
2. Self-attestation form to support the Near Retirement Waiver

APPLICANT STATEMENT

I understand that this document is being used to support a Near Retirement Waiver that I am applying for under the Trade program.

SUPPORT FOR A NEAR RETIREMENT WAIVER

_____ I am applying for a waiver under the near retirement clause of the Trade Act. By selecting this statement, I am testifying that I am within 2 years of retirement. I understand that by completing this document does not guarantee that I will be given the Trade waiver, any Trade funds or that I will receive funds until I retire.

I attest that the information, is true and accurate and represents me. If this information is misrepresented I understand that it could be grounds for revocation of the waiver that was issued based on the information.

Trade Impacted Worker's Signature

Date

Staff Members Signature

Date

APPLICANT STATEMENT

I understand that this document is being used to support a Marketable Skills waiver that I am applying for under the Trade program.

SUPPORT FOR MARKETABLE SKILLS WAIVER

_____ I am applying for a waiver under the marketable skill clause of the Trade Act. I am using this statement to help document that I have the following skills or qualifications which are essential for me to obtain employment in the _____ field. I understand that completing this document does not guarantee that I will be given the waiver or any Trade funding.

List the specific skills/abilities that you possess that are essential to obtain employment in the field listed above.	

I attest that the information, stated above, is true and accurate and represents me. If this information is misrepresented I understand that it could be grounds for revocation of the waiver that was issued based on the information.

 Trade Impacted Worker's Signature

 Date

 Staff Members Signature

 Date