

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Office of Trade Adjustment Assistance
	CORRESPONDENCE SYMBOL OTAA
	DATE September 24, 2020

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 3-20

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
AFFILIATE AMERICAN JOB CENTER MANAGERS
COMPREHENSIVE AMERICAN JOB CENTER MANAGERS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS
STATE UI DIRECTORS
RAPID RESPONSE COORDINATORS
TRADE ADJUSTMENT ASSISTANCE LEADS

FROM: JOHN PALLASCH 
Assistant Secretary

SUBJECT: Determining the Availability of Suitable Employment Under the Trade Adjustment Assistance (TAA) Program’s Final Rule to Return Trade-Affected Workers to Employment as Quickly as Possible

1. **Purpose.** To provide states guidance on determining the availability of suitable employment prior to the approval of training under the TAA Program’s Final Rule. This determination will assist trade-affected workers’ reemployment as soon as possible following a separation.
2. **Action Requested.** States are required to implement the guidance set forth herein and must continue to administer the TAA Program in accordance with applicable regulations and administrative guidance. States must inform all appropriate staff of the contents of this guidance.
3. **Summary and Background.**
 - a. Summary – The Department published a Final Rule implementing the Trade Adjustment Assistance Reauthorization Act of 2015 on August 21, 2020 (85 FR 51896). The Final Rule is codified at 20 CFR Part 618. Section 236 of the Trade Act of 1974, as amended, establishes six criteria that trade-affected workers must meet prior to the approval of training under the TAA Program. These criteria are found in regulations at 20 CFR 618.610. Criterion 1, at 20 CFR 618.610(a)(1), requires a finding that, “there is no suitable employment available for a trade-affected worker in either the commuting area or another area outside the commuting area to which the worker intends to relocate, and there is no reasonable prospect of such suitable employment becoming available for the

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worker in the foreseeable future.” Suitable employment, as defined at 20 CFR 618.110, means, “work of a substantially equal or higher skill level than the worker’s past adversely affected employment, and wages for such work that are not less than 80 percent of the worker’s average weekly wage. Part-time, temporary, short-term, or threatened employment is not suitable employment.” In order to determine whether suitable employment is available, the state must conduct an assessment of the trade-affected worker’s knowledge, skills, and abilities as described in Subpart C of 20 CFR Part 618.

A state will also need updated and accurate information of demand within the local labor market in order to make a determination.

- b. Background – Historically, under the TAA Program, approximately half of all participants enroll in training. As shown in the Fiscal Year (FY) 2019 TAA Annual Report, 25 percent of participants did not complete TAA approved training, and participants who did not enroll in any training had employment and earnings outcomes higher than those who completed training but did not receive a credential, but lower than those who completed training and earned a credential. The wage replacement rate for those who did not enroll in training and those who completed training that leads to a credential, were nearly identical (89.6 percent and 89.9 percent, respectively). This strongly suggests that states have been making inappropriate determinations related to whether there is suitable employment available to trade-affected workers. These determinations cause trade-affected workers to undergo training, sometimes months or longer in duration, for a de minimis increase in wage replacement. This guidance is being issued to ensure that states make more informed decisions about the prospects for suitable employment. This requires the case management staff to look deeper into labor market information (LMI), job posting, and other data to determine the best path forward for the customer. TAA and other case managers must ask if there is, or will be, suitable employment in the near future. They must also determine if there is appropriate short-term training which can leveraged to develop competency and get the individual back to work.

4. Application.

- a. Assessments – We strongly encourage the TAA Program staff to coordinate with other local workforce partners such as the Workforce Innovation Opportunity Act (WIOA), Wagner-Peyser, and Vocational Rehabilitation to agree upon a uniform assessment process for all customers accessing an American Job Center, whether in-person or remotely. This coordination will streamline the process for the customers and allow multiple programs to provide seamless services to the trade-affected worker. Various types of assessments can be used to determine a trade-affected worker’s knowledge, skills, and abilities. Depending on the trade-affected worker, an initial assessment, described under 20 CFR 618.335, may be sufficient to determine the availability of suitable employment and whether training is appropriate. Other trade-affected workers will require comprehensive and specialized assessments, as described at 20 CFR 618.345. Most trade-affected workers will not require training to return to suitable employment.

Instead, these workers may benefit from rapid deployment of employment and case management services allowable under Subpart C of 20 CFR Part 618.

- b. **Employment and Case Management Services** – States are instructed to make employment and case management services under sec. 235 of the Trade Act, as amended, available to trade-affected workers. As with the assessments in 4.a. above, TAA Program staff should work with other workforce partners to conduct and track case management services in a single, unified case management system wherever possible. Using a system-wide case management system will provide a citizen-centered approach that will ensure the partners track all services being provided to the trade-affected worker and allow for uninterrupted services. These services include assessments, pre-vocational training, individual and group career counseling, and other services described in Subpart C of 20 CFR Part 618, such as workshops on: networking, interviewing, resume writing, and computer literacy. For many trade-affected workers, the barrier to reemployment is not in their occupational skill set but with a lack of knowledge of current technology¹. Computer and technology literacy, or many other skill deficiencies, can be addressed and overcome through adult education partners as a precursor to reemployment or training. Many trade-affected workers return to employment after a short, intensive provision of employment and case management services, without a need for additional training. Rapid reemployment into suitable employment is always the preferred approach as this is the best outcome for the trade-affected worker and allows TAA and other workforce staff to focus limited resources on workers with more significant barriers to employment.
- c. **Workforce Information** – TAA approved training must meet the six criteria established at 20 CFR 618.610(a)(1) through (6). The first of these criteria is that there is no suitable employment available to the trade-affected worker, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future. In addition to any assessments of the trade-affected worker, to determine whether suitable employment is available, states must also have updated and accurate workforce information readily available on the current and projected occupational demands in the worker’s commuting area. This information can be obtained through various methods, as described at 20 CFR 618.610(c)(2), by measuring expected job market conditions using pertinent labor market data, including but not limited to job order activity, short-term projections data, job vacancy surveys, business visitation programs, and local and regional strategic plans. This LMI should be documented in the trade-affected worker’s case file. The TAA Final Rule goes on to say that the state should also work with the local workforce development boards (LWDBs) and their one-stop partners, especially business team members, to understand current labor market conditions and opportunities for work-based learning. In order to satisfy these criteria, all relevant LMI, job postings, and third party job sites (e.g.; Zip Recruiter, Indeed, Jobs.com, etc.) must be reviewed to confirm that there is no suitable employment within the commuting area or another area outside the commuting area where the trade-affected worker intends to relocate. Only if no suitable employment, or the prospect of such suitable employment, is identified

¹ AARP. (2015). “Improving Education and Training for Older Workers.” Retrieved from: www.aarp.org/content/dam/aarp/ppi/2015/improving-education-training-older-workers-AARP-ppi.pdf.

through all available resources does the proposed training program satisfy Criterion 1, at 20 CFR 618.610(a).

- d. **Appropriate Training** – Additional requirements in meeting the six criteria established at 20 CFR 618.610(a)(1) through (6) will be helpful in verifying that suitable employment, or the prospect of such suitable employment, is met. Criterion 2, at 20 CFR 618.610(b) emphasizes that for the trade-affected worker to benefit from appropriate training, the training must improve the worker’s chances of obtaining employment than would occur without training. The training should also improve the trade-affected worker’s chances of either earning higher wages than would otherwise be the case or that the training will place the worker on a pathway to do so. Criterion 5, at 20 CFR 618.610(e) adds a new requirement directing states to review the trade-affected worker’s initial assessment, and the comprehensive and specialized assessment and individual employment plan, if available, to determine if the proposed training is appropriate based on the worker’s current skills.

As a required partner in the American Job Center Network, the TAA Program’s efforts to gather this information should always be done in cooperation with the state, LWDBs, local employers, economic development agencies, and the state’s LMI unit.

5. **Inquiries.** For further information about the approval of training under the TAA Program, states should visit taa.workforcegps.org and contact their appropriate Regional Office.
6. **References.**
 - Chapter 2 of Title II of the Trade Act of 1974, as amended (Pub. L. 93-618) (Trade Act) (codified at 19 U.S.C. §§ 2271 et seq.); and
 - 20 CFR Part 618, 85 FR 51896 (August 21, 2020).
7. **Attachment(s).** N/A