

Attachment 1

Availability of Equitable Tolling of Deadlines for Workers Covered Under Trade Adjustment Assistance (TAA) Certifications

Questions and Answers

1. What is this TEGL about?

This TEGL reminds states of the critical importance of their responsibility to notify adversely affected workers that they are covered under a TAA certification and to provide them with TAA benefit information that explains TAA deadlines.

It also announces that the Department of Labor (Department) recognizes that TAA benefit deadlines may be equitably tolled for workers after those deadlines have passed.

2. What is equitable tolling?

Equitable tolling is a legal principle evolved from the common law of equity. The principle of equitable tolling provides that the statute of limitations will not bar a claim if the individual, despite reasonable care and diligent efforts, did not discover the injury until after the limitations period had expired. Courts have the authority to provide “equitable” remedies in situations where it would be unjust or unfair not to provide relief to a party as appropriate. If the court applies the doctrine, the failure to meet the deadline is excused and the individual will be allowed to proceed as if the time to meet the deadline had not expired.

Generally, when the time to meet a deadline is “tolled”, it means that the time to meet the deadline has been stopped. Tolling the time to meet a deadline provides additional time to meet that deadline.

3. Why is the Department issuing this policy now?

The Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) provided relief to workers who failed to meet deadlines for applying for Trade Readjustment Allowances (TRA) for “good cause” as provided in state laws and regulations for waiver of time limits or late filing of claims. These provisions expired in February 2011, and workers again were without statutory relief from strict TRA deadlines. Thereafter, the Illinois State Supreme Court, issued an opinion in *Williams v. Board of Review*, 2011 Westlaw 1049884 (Ill. March 24, 2011), applying the doctrine of “equitable tolling” to toll the strict deadline for enrolling in training (that was in effect before the TGAAA) because the worker, Ms. Williams, had not been notified by the State of her certification or advised of TAA training and benefit enrollment deadlines as required under 20 CFR Part 617.

In view of this decision and Federal court decisions applying this well-established doctrine in cases involving different Trade Act provisions, the Department now recognizes that equitable tolling may be available in situations where it would be manifestly unfair to deny a worker TAA benefits based on a missed deadline.

Attachment 1

4. Does this TEGL apply to past determinations, or only to future decisions?

States are being instructed to take appropriate action to apply equitable tolling in all determinations, redeterminations, and appeals on TAA deadlines issued on or after the date of this TEGL in accordance with 20 CFR 617.50(c) and 20 CFR 617.51.

In particular, states are being asked to inform all appropriate staff, including the appellate divisions of the state agency, of the availability of equitable tolling to eligibility deadlines for TAA benefits applicable to TAA claims or applications made by workers, as described in this TEGL.

5. What specific deadlines are addressed in this TEGL?

This TEGL describes how equitable tolling applies to TAA benefit deadlines; and specifically identifies:

- a) Deadline to enroll in training (Section 231(a)(5)(A) of the Trade Act)
- b) Deadline to apply for Additional TRA (20 CFR 617.15(b)(2))
- c) Deadline to apply for Job Search Allowances (20 CFR 617.31(c))
- d) Deadline to apply for Job Relocation Allowances (20 CFR 617.41(c))

However, this list is not exclusive, and other TAA benefit deadlines may be equitably tolled in appropriate cases.