

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA CORRESPONDENCE SYMBOL OTAA DATE December 15, 2010
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 16-10

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
ONE-STOP CENTER SYSTEM LEADS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND
DIRECTORS
STATE LABOR COMMISSIONERS

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Instructions for Phasing Out Changes to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009

1. Purpose. To provide guidance to the State Workforce Agencies or agencies designated by Governors as “Cooperating State Agencies” (CSAs) (also jointly referred to as “states”) for phasing out the amendments to the Trade Act of 1974 enacted by the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA or the 2009 Amendments). Because December 31, 2010 (the statutory deadline) is a Federal holiday, followed by Saturday, January 1, and Sunday January 2, petitions received on and before 11:59 PM EST, Monday, January 3, will be governed by the 2009 Amendments, and workers covered by those petitions may be eligible for the benefits and services provided by those Amendments. Petitions filed after that date and time will be governed under the prior law, and workers covered by those petitions may be eligible for the benefits and services provided under that prior law.

2. References. The Trade and Globalization Adjustment Assistance Act of 2009, Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, (Pub. L. No. 111-5, enacted February 17, 2009); Trade Adjustment Assistance Reform Act of 2002, Division A Title I, Subtitle A of the Trade Act of 2002, (Pub. L. No. 107-210) (2002 Amendments); the Trade Act of 1974, as amended (Pub. L. No. 93-618, as amended) (Trade Act); Wagner-Peyser Act, as amended (29 U.S.C. 49 et seq.) (Wagner-Peyser); the Workforce Investment Act of 1998, as amended (Pub. L. No. 105-220) (29 U.S.C. 2801 et seq.) (WIA); 20 CFR Part 617; 29 CFR Part 90; 20 CFR Part 618; Training and Employment Guidance Letter (TEGL) No. 9-09, Fiscal Year (FY) 2010 State Initial Allocations and the Process for Requesting Additional Trade Adjustment Assistance (TAA) Program Reserve Funds; TEGL No. 22-08 and Change 1, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009; TEGL No. 4-08 and Change 1, Fiscal

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Year (FY) 2009 State Supplemental Training Fund Distributions Including Case Management Funds and the Process for Requesting Additional Trade Adjustment Assistance (TAA) Program Reserve Funds; TEGL No. 11-02, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, and Changes 1, 2, and 3; TEGL No. 2-03, Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002, and Change 1; and TEGL No. 5-00, Attachment B, Guidance on Integrating Services under the Trade Act Programs - Trade Adjustment Assistance (TAA) and North American Free Trade Agreement - Transitional Adjustment Assistance (NAFTA-TAA) - with the Services Provided under the Workforce Investment Act (WIA) and the Paperwork Reduction Act of 1995 (P.L. 104-13).

3. Background. The TAA program, under chapter 2 of title II of the Trade Act (19 U.S.C. 2271 et seq.), provides adjustment assistance for workers whose jobs have been adversely affected by international trade. The TAA program for workers was first established by the Trade Act of 1974, and has been amended numerous times over the past 35 years. The latest amendments, referred to as the 2009 Amendments, are contained in the TGAAA. Before the 2009 Amendments, the program was operated under the provisions of Trade Act, as amended by the 2002 Amendments.

When the Department of Labor (Department) implemented the 2009 Amendments, TEGL No. 22-08 provided that petitions filed on or after May 18, 2009, would be governed by the 2009 Amendments and the 2009 Amendments would apply to benefits and services available to workers covered under certifications of these petitions. Benefits and services received by workers covered by certifications of petitions filed before May 18, 2009, would continue to be governed by the provisions of the Trade Act, as amended by the 2002 Amendments. This distinction meant that CSAs would be providing benefits under two different sets of rules for workers covered by certifications of petitions filed before, and on or after, May 18, 2009.

Section 1893 (a)(1) of the TGAAA provides that the 2009 Amendments “shall not apply [to petitions filed] on or after January 1, 2011.” Thus, the law provides that workers covered by certifications of petitions filed on and after May 18, 2009, and before January 1, 2011, will continue to receive the benefits and services that were available under the 2009 Amendments. The exception is that the decrease in the Health Coverage Tax Credit (HCTC) that goes into effect beginning with the month of January, 2011, applies to all recipients (including workers covered by certifications of petitions filed under the 2009 Amendments), regardless of when their petition was filed.

The TGAAA further provides that, beginning on January 1, 2011, the TAA for workers program will be administered as if the 2009 Amendments had never happened, except that workers covered by certifications of petitions filed on or after May 18, 2009, and on or before January 1, 2011, will receive benefits and services as provided under the 2009 Amendments, including the Reemployment Trade Adjustment Assistance (RTAA) program for older workers. Petitions filed on or after January 1, 2011, and benefits and services under certifications of those petitions, will be governed by the 2002 Amendments, including the Alternative Trade Adjustment Assistance (ATAA) for Older Workers program, the predecessor (and now successor) to RTAA. The specific statutory language of the “sunset provisions” reads as follows:

SEC. 1893. TERMINATION; RELATED PROVISIONS.

(a) SUNSET.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this subtitle to chapters 2, 3, 4, 5, and 6 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) shall not apply on or after January 1, 2011.

(2) EXCEPTION.—The amendments made by this subtitle to section 285 of the Trade Act of 1974 shall continue to apply on and after January 1, 2011, with respect to—

(A) workers certified as eligible for trade adjustment assistance benefits under chapter 2 of title II of that Act pursuant to petitions filed under section 221 of that Act before January 1, 2011;

(b) APPLICATION OF PRIOR LAW.—Chapters 2, 3, 4, 5, and 6 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) shall be applied and administered beginning January 1, 2011, as if the amendments made by this subtitle (other than part VI) had never been enacted, except that in applying and administering such chapters—

(5) subject to subsection (a)(2), section 285 of that Act shall be applied and administered—

(A) in subsection (a), by substituting “2011” for “2007” each place it appears.

4. Effective Date. Federal regulations at 29 CFR 90.2 define “date of filing” as the “date on which petitions are received by” the Division of Trade Adjustment Assistance (DTAA), now the Office of Trade Adjustment Assistance (OTAA). December 31, 2010 is a Federal Holiday and therefore, mail will not be received by OTAA that day, nor will technical support be available on January 1 and 2, 2011 as they are not business days. Therefore, in order to be considered “filed before January 1, 2011” and covered under the 2009 Amendments, a petition must be received by OTAA by 11:59 PM on January 3, 2011. It is not sufficient for a petition to be postmarked before that date. In addition, due to security procedures, mail to the Department of Labor is often delayed. Therefore, the Department strongly recommends that petitioners who wish to be considered under the 2009 Amendments file early and file online or by fax to ensure receipt on or before 11:59 PM EST on Monday, January 3, 2011. Petitions filed after 11:59 PM EST on Monday, January 3, 2011, will be governed under the 2002 amendments, and workers covered by these petitions will be eligible for TAA program benefits and services under the 2002 Amendments.

A petition is filed in time to be considered under the 2009 Amendments if it is received:

- Via mail at the Office of Trade Adjustment Assistance at Employment and Training Administration (ETA), United States Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210 on or before 5:00 PM EST January 3, 2011;
- Via fax to 202-693-3585 on or before 11:59 PM EST January 3, 2011. The Department strongly suggests that petitioners retain the fax cover sheet with the date and time stamp.
- Via online petition processing located on the OTAA’s website, www.doleta.gov/tradeact, and a confirmation email generated by the system is sent to the worker that indicates the petition was received in the Office of Trade Adjustment Assistance on or before 11:59 PM EST January 3, 2011.

As long as a petition is received on or before 11:59 PM EST on January 3, 2011, the fact that it is certified after that date, does not affect covered workers' eligibility for benefits under the 2009 Amendments. The date and time in the Eastern Standard Time (EST) time zone controls whether a petition is timely.

5. Instructions. In order to implement the sunset provisions of the TGAAA, states will serve workers in the TAA program covered by petitions filed on or after January 4, 2011, under the provisions of the 2002 Amendments, as they were in effect before the TGAAA. However, regulatory changes to program administration and funding at 29 CFR part 618 will continue to apply on and after January 4, 2011.

In order to help states determine whether either the 2009 Amendments or the 2002 Amendments govern benefits and services for a specific worker, the Department will once again start a new petition number series. Workers covered by the 2002 Amendments before the 2009 Amendments went into effect were identified by petition numbers ranging from 50,000 to 69,999. Workers covered by the 2009 Amendments were identified by petition numbers ranging from 70,000 to 79,999.

Due to the Federal Holiday that falls on December 31, 2010, the Department will identify petitions received on or after January 4, 2011, and therefore covered under the 2002 Amendments, with petition numbers greater than 80,000.

Therefore, CSAs will be required to manage benefits and services for three distinct cohorts:

- i. Workers covered by petitions filed on or before May 17, 2009, identified by a petition number lower than 70,000. These workers are subject to the provisions of the 2002 Amendments, as implemented in TEGL No. 11-02 and Changes, 1, 2, and 3; TEGL No. 2-03, and Change 1; as well as regulations codified at 20 CFR parts 617 and 618, and 29 CFR part 90.
- ii. Workers covered by petitions filed on or after May 18, 2009, and on or before 11:59 PM on January 3, 2011, identified by petition numbers greater than 70,000 and less than 80,000. These workers are subject to the provisions of the 2009 Amendments as implemented in TEGL No. 22-08 and Change 1; as well as regulations codified at 20 CFR parts 617 and 618, and 29 CFR part 90.
- iii. Workers covered by petitions filed on or after January 4, 2011, identified by a petition number greater than 80,000. These workers are subject to the provisions of the 2002 Amendments as implemented in TEGL No. 11-02, and Changes 1, 2, and 3; and TEGL No. 2-03, and Change 1; as well as regulations at 20 CFR parts 617 and 618 and 29 CFR part 90.

In addition, funds designated for expenditure on employment and case management services may only be expended to provide those services for workers covered by the 2009 Amendments. Workers covered by the 2002 Amendments are not entitled to TAA-funded employment and case management services, although states are required to make every reasonable effort to secure those services through other Federal programs.

6. Key TGAAA Provisions that Will No Longer Apply. The 2009 Amendments made several substantial programmatic changes that will no longer apply under the reversion to the 2002 Amendments. Below is a summary of changes that will apply to petitions filed on or after January 4, 2011, and workers covered under certifications of those petitions:

Group Eligibility Provisions Will No Longer Cover

- Workers in firms that supply only services;
- Workers in firms impacted by shifts in production to countries that are not in a free trade agreement with the United States or beneficiary countries under certain statutes will only be eligible if those shifts are accompanied by an increase in imports to the U.S.
- Workers in public agencies;
- Workers in firms that produce component parts for finished products of its customers with increased imports of those products;
- Workers in firms that supply testing, packaging, maintenance and transportation services to companies with TAA-certified workers, (unless these workers' firms are downstream producers who are categorized as secondary workers under the 2002 Amendments); and
- Workers in firms identified in International Trade Commission “injury” determinations will no longer be certified “automatically”.

Program Administration and Service Delivery

- Workers will not be entitled to employment and case management services under the TAA program, and TAA funds will not be designated for that purpose;
- States will no longer be able to apply Unemployment Insurance (UI) “good cause” waiver provisions to TAA deadlines;
- States must continue to apply merit staffing requirements under 20 CFR 618.890.

Training

- The statutory cap on funds that may be allocated to the states for training will be reduced from \$575 million per year to \$220 million per year;
- TAA training will no longer be available before a worker’s separation from employment;
- Part-time training will not be allowable; and
- The deadline for enrolling in training in order to qualify for Training Readjustment Allowance (TRA) will be reduced from the later of 26 weeks from the worker’s most recent total qualifying separation or the certification date, back to the later of 16 weeks from the worker’s most recent qualifying separation or eight weeks from certification. States may grant an extension of the training deadline for up to 45 days for extenuating circumstances.

Income Support

- Decreases the maximum award of additional TRA from 78 to 52 weeks for workers in training, and reduces the eligibility period for additional TRA from 91 weeks to 52 weeks;
- Eliminates the statutory authority for the award of up to 26 weeks of remedial TRA to allow workers to enroll in prerequisite coursework to complete a training program; and
- Eliminates the ability of trade-affected workers to elect TRA over UI based upon a second UI claim resulting from part-time or short-term work with a lower Weekly Benefit Amount (WBA).

Wage Subsidy (ATAA/RTAA)

- Older workers will no longer be eligible for the new RTAA program, eligibility will revert to the ATAA program;
- Re-institutes the requirement for a separate group eligibility determination in order for older workers to be eligible for a wage subsidy under the ATAA program;
- Re-institutes the requirement under ATAA that a worker must find reemployment within 26 weeks of layoff, and be employed on a full-time basis;
- Decreases the limit on wages in eligible reemployment to \$50,000 a year; and
- Decreases the maximum wage subsidy from \$12,000 to \$10,000.

Health Coverage Tax Credit (HCTC)

- Reduces the HCTC tax credit to 65 percent from 80 percent of the amount a worker paid for coverage under qualifying health insurance, beginning with the month of January 2011 for all HCTC recipients covered by either the 2009 Amendments or 2002 Amendments.

Job Search and Relocation

- Reduces the percent of job search expenses that may be paid on behalf of a qualified participant to 90 percent of the total expenses, and a reduced cap of \$1,250; and
- Reduces the percent of relocation expenses that may be paid on behalf of a qualified participant to 90 percent of the total expenses, plus a payment up to a reduced amount of \$1,250.

7. Paperwork Reduction Act. The Department will issue separate guidance on aligning the ETA collection forms in OMB 1205-0342 (TAA petition form), with the TAA program under the 2002 amendments. The Department has submitted the necessary change requirements to OMB in accordance with the Paperwork Reduction Act of 1995.

8. Action Requested. CSAs will be required to manage benefits and services provided to TAA program participants as described above beginning January 4, 2011. States will be notified if the sunset provisions of the TGAAA are extended to allow the 2009 Amendments to continue to apply after 11:59 PM EST January 3, 2011.

9. Inquiries. State Administrators should direct all inquiries to the appropriate Employment and Training Administration Regional Office.

10. Attachment. TAA Program Sunset Provisions Questions and Answers for Participants on TAA Sunset Provisions.