EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL OTAA
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ADVISORY: **TRAINING AND EMPLOYMENT GUIDANCE LETTER NO.** 10-11

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
Assistant Secretary

SUBJECT: Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)

1. Purpose. To assist State Workforce Agencies or agencies designated by Governors as "Cooperative State Agencies" (CSAs) (also jointly referred to as "states") implement the provisions of the TAAEA enacted on October 21, 2011. The TAAEA amends the Trade Adjustment Assistance (TAA) program (2011 Amendments), restoring (with some exceptions) the expanded certification criteria and benefits and services provided under the Trade and Globalization Adjustment Act of 2009 (2009 Amendments).

2. References.

- Chapter 2 of Title II of the Trade Act of 1974, as amended (Pub. L. 93-618) (1974 Act and, as amended, Trade Act);
- Trade Adjustment Assistance Reform Act of 2002, Division A, Title I, Subtitle A of the Trade Act of 2002 (Pub. L. 107-210), as amended by the Miscellaneous Trade and Technical Corrections Act of 2004, (Pub. L. 108-429);
- 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. 111-5);
- Omnibus Trade Act of 2010 (Pub. L. 111-344) (Omnibus Trade Act);
- Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112-40);
- 20 Code of Federal Regulations (CFR) part 617);
- 20 CFR part 618;
- 29 CFR part 90;

RESCISSIONS None	EXPIRATION DATE Continuing

- TEGL No. 11-02, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, and its 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 its Changes*
- TEGL No. 22-08, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, and its Change 1;*
- TEGL No. 16-10, *Instructions for Phasing Out Changes to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, and its Change 1;*
- TEGL No. 15-10, *Increasing Credential, Degree, and Certificate Attainment by Participants of the Public Workforce System*; and
- TEGL No. 08-11, *Availability of Equitable Tolling of Deadlines for Workers Covered Under Trade Adjustment Assistance (TAA) Certifications.*

3. Definitions.

1. 2002 Amendments means the Trade Act of 1974, Pub. L. 93-618, as amended by the Trade Adjustment Assistance Reform Act of 2002, Pub. L. 107-210 and the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. 108-429.
2. 2002 Program means the TAA program under the 2002 Amendments.
3. 2009 Amendments means the Trade Act of 1974, as amended by the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA).
4. 2009 Program means the TAA program under the 2009 Amendments.
5. 2011 Amendments means the Trade Act, as amended by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA).
6. 2011 Program means the TAA program under the 2011 Amendments.
7. ATAA means the Demonstration Project for Alternative Trade Adjustment Assistance for Older Workers, under Section 246 of the 2002 Act, as in effect on May 17, 2009, the day before the effective date of the 2009 Act, and during the period from February 13, 2011 through October 20, 2011.
8. RTAA means Reemployment Trade Adjustment Assistance, under Section 246 of either the 2009 Act or the 2011 Act, depending on the context of the discussion.
9. HCTC means Health Coverage Tax Credit. (Section 35, Internal Revenue Code (I.R.C.) of 1986) (26 U.S.C. 35), under the 2002 Program, the 2009 Program or the 2011 Program, depending on the context of the discussion.
10. WIA means the Workforce Investment Act of 1998, Pub. L. 105-220, as amended (29 U.S.C. 2801, *et seq.*).
11. Trade-Affected Worker means a worker who is a member of a certified worker group and has been separated or threatened with separation. This term includes both an adversely affected worker and an adversely affected incumbent worker, as defined under the 2011 Act.
12. Enactment Date means October 21, 2011, the date on which President Obama signed the TAAEA.

4. Background. The TAA for Workers Program (TAA program) was first established at the U.S. Department of Labor (Department) under chapter 2 of title II of the Trade Act of 1974 (1974 Act). The TAA program has a two-step process for workers to obtain program benefits. First, a group of workers, or other specified entities, must file a petition for certification of eligibility to apply for TAA benefits and services with Office of Trade Adjustment Assistance (OTAA) in the Department's Employment and Training Administration (ETA) and the state in which the workers' firm is located. A petition will be certified by a Certifying Officer in OTAA after finding that the statutory criteria that test whether the group of workers was adversely affected by international trade have been met. Second, workers who are part of a group covered under a certified petition may apply individually to a state for TAA benefits and services. States administer the TAA program as agents of the Secretary of Labor (Secretary) through a state agency or agencies designated as the CSA in an agreement between the Governor and the Secretary (the Governor-Secretary Agreement). The CSA is responsible for both the determination of worker eligibility to receive TAA, and the provision of benefits and services to TAA-eligible workers.

The 2002 Amendments

The 1974 Act has been amended numerous times. The Trade Adjustment Assistance Reform Act of 2002 reauthorized and expanded the scope of the TAA program and increased benefit amounts, repealed the North American Free Trade Agreement Transitional Adjustment Assistance (NAFTA-TAA) program, added to the TAA program in 1993 to provide benefits to workers who lost their jobs because of trade with Mexico and Canada after NAFTA, created the Health Coverage Tax Credit (HCTC), and initiated a pilot program for Alternative Trade Adjustment Assistance for older workers (ATAA program). The NAFTA-TAA program was no longer necessary because the 2002 Amendments extended the same favorable TAA coverage to workers who lost their jobs because of shifts in production to other countries with which the United States had trade agreements or treaties or where there was also a likelihood of increased imports, as NAFTA-TAA had provided to workers who lost their jobs because of shifts in production to Mexico and Canada. Adversely affected secondary workers, whose layoffs could be attributed to trade impacts demonstrated by TAA certifications of workers for companies for whom their firms were suppliers or downstream producers, also were covered under these amendments. The 2002 Program applied to workers covered under petitions filed on or after November 4, 2002.

The operation of the TAA program for workers covered by petitions filed on or after November 4, 2002 and before May 18, 2009 is governed by 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*; and 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 Changes 1 and* 2. The provisions of the longstanding TAA regulations codified at 20 CFR part 617 that were not affected by program changes in 2002 also have continued to apply to the TAA program and workers covered under the 2002 Amendments.

The 2009 Amendments

The TGAAA reauthorized the TAA program through December 31, 2010, and again expanded its scope to cover additional categories of Trade-Affected Workers, increased benefit amounts, and added employment and case management services to the categories of TAA benefits. The Older Workers Program no longer was a pilot program and was renamed the RTAA program. Workers no longer had to choose between receiving ATAA or the training benefit. Part-time training could be approved for all Trade-Affected Workers, and Trade-Affected Workers could enroll in TAA-approved training before separation from employment. The 2009 Amendments, applied to workers covered under petitions filed on or after May 18, 2009, through December 31, 2010.

The Omnibus Trade Act amended the TGAAA to provide a six-week extension of the December 31, 2010 termination date of the program in effect under the 2009 Amendments (the 2009 Program), and the resumption of the program in effect before the 2009 Amendments (the 2002 Program). As described in TEGL No. 16-10, Change 1, the application of the 2009 Amendments ended (or "sunset") on February 12, 2011. The expanded TAA group eligibility and certification requirements available under the 2009 Amendments continued to apply to petitions received on or before 11:59 PM EST on Monday, February 14, 2011, which was the next business day after February 12, 2011, a Saturday.

TEGL No. 22-08, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, and its Change 1* continue to govern the delivery of benefits to workers covered under the 2009 Program. TEGL No. 11-02, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, and its Changes 1, 2, and 3*; and 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 its Change 1* continue to govern the delivery of benefits to workers covered by petitions filed on or after November 4, 2002 and before May 18, 2009, and where identified in Section A.2.4 below, the delivery of benefits to workers covered under petitions numbered TA-W-80,000-80,999.

The Secretary's regulations codified at 20 CFR part 617 continue to apply to the delivery of benefits under the 2002 Program and the 2009 Program to the extent that the applicable law did not supersede those regulatory requirements, as explained in the TEGLs and other guidance documents that apply to the respective programs. To the same extent, 29 CFR part 90 continues to apply to the certification process for all TAA petitions. The regulatory requirement of merit-based staffing of the TAA program, codified at 20 CFR 618.890, continues to apply to state administration.

5. Operating Instructions. The operating instructions contained this TEGL are issued to states as guidance provided by the Department, through ETA, in its role as the principal of the TAA program. The states, as agents of the Secretary, may not vary from the operating instructions in this document without prior approval from ETA. The operating instructions in this document constitute the controlling guidance for the states in implementing and administering the 2011

Amendments. These operating instructions only address changes to the TAA program made by the 2011 Amendments.

A. APPLICATION OF THE 2011 AMENDMENTS

The sections below describe how the 2011 Amendments apply to three distinct cohorts of workers: workers covered by petitions filed before February 13, 2011, with petition numbers below TA-W-80,000; workers covered by petitions filed after February 13, 2011 and before October 21, 2011, with petition numbers ranging from TA-W-80,000-80,999; and workers covered by petitions filed on or after October 21, 2011, with petition numbers beginning with TA-W-81,000.

Note that nothing in the 2011 Amendments or these operating instructions affect the benefits and services available to workers covered under petitions certified under the 2009 Act, or workers covered under petitions filed before May 18, 2009 and certified under the 2002 Act.

A.1. Petitions filed before February 13, 2011

Statute: Section 231(a)(2)of the TAAEA reads:

(2) PETITIONS FILED BEFORE FEBRUARY 13, 2011.—A worker certified as eligible to apply for trade adjustment assistance pursuant to a petition filed under section 221 of the Trade Act of 1974—

(A) on or after May 18, 2009, and on or before February 12, 2011, shall continue to be eligible to apply for and receive benefits under the provisions of chapter 2 of title II of such Act, as in effect on February 12, 2011; or

(B) before May 18, 2009, shall continue to be eligible to apply for and receive benefits under the provisions of chapter 2 of title II of such Act, as in effect on May 17, 2009.

Administration: The TAAEA does not change the benefits and services available to workers covered by certifications of petitions filed before February 13, 2011, which ETA interpreted in TEGL No. 16-10 Change 1, to mean petitions received on or before 11:59 PM EST (Monday) February 14, 2011, the next business day after February 12, 2011, a Saturday. These workers are and will continue to be served as described below:

i. Workers covered by certifications of petitions filed on or before May 17, 2009, identified by a petition number lower than TA-W-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 the applicable provisions of the 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 February 14, 2011, identified by petition numbers between TA-W-70,000 and TA-W-79,999. These workers are subject to the provisions of the 2009 Amendments as

implemented in TEGL No. 22-08 and Change 1; TEGL 16-10 and its Change 1; as well as the applicable provisions of the regulations codified at 20 CFR parts 617 and 618, and 29 CFR part 90.

A.2 Petitions filed between February 13, 2011 and October 21, 2011

Several provisions of the TAAEA address workers covered by certifications of petitions filed after February 13, 2011 (actually, February 14, 2011, as explained in Section A.1, above,) and before the Enactment Date, October 21, 2011. These workers are covered by petitions with numbers ranging from TA-W-80,000-80,999.

A.2.1 Certification Requirements for Petitions under Investigation on October 21, 2011

Statute: Section 231(a)(1)(A) of the TAAEA of 2011 reads:

(A) CERTIFICATIONS OF WORKERS NOT CERTIFIED BEFORE DATE OF ENACTMENT.—

(i) CRITERIA IF A DETERMINATION HAS NOT BEEN MADE.—If, as of the date of the enactment of this Act, the Secretary of Labor has not made a determination with respect to whether to certify a group of workers as eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974 pursuant to a petition described in clause (iii), the Secretary shall make that determination based on the requirements of section 222 of the Trade Act of 1974, as in effect on such date of enactment.

Administration: The 2011 Amendments provide that, for any petition filed after February 13, 2011 (February 14, 2011) and on or before October 21, 2011 (petitions with numbers ranging from TA-W-80,000-80,999), for which an investigation is still pending, a determination will be issued based on the group eligibility provisions of the 2011 Act. OTAA's investigation of these petitions under the provisions of the 2011 Act does not require any action on the part of the petitioners or the state.

A.2.2 Reconsideration of Determinations Issued Before October 21, 2011, Denying Certification of Petitions

Statute: Section 231(a)(1)(ii) of the TAAEA reads:

(ii) RECONSIDERATION OF DENIALS OF CERTIFICATIONS.—If, before the date of the enactment of this Act, the Secretary made a determination not to certify a group of workers as eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974 pursuant to a petition described in clause (iii), the Secretary shall—

(I) reconsider that determination; and

(II) if the group of workers meets the requirements of section 222 of the Trade

Act of 1974, as in effect on such date of enactment, certify the group of workers as eligible to apply for adjustment assistance.

Administration: The 2011 Amendments require OTAA to reopen investigations of any petitions filed after February 13, 2011 (February 14, 2011) and on or before October 21, 2011, identified by a petition number between TA-W-80,000 and 80,999, that resulted in a denial of a certification by OTAA before October 21, 2011. This includes petitions that were denied after reconsideration before October 21, 2011 or were under a reconsideration investigation on or before October 21, 2011. This action is necessary to determine worker group eligibility under the new provisions of the 2011 Act. A list of the petitions for which OTAA has reopened investigations has been posted on the website at www.doleta.gov/tradeact/pdf/80000Denials.pdf. Neither states nor petitioners need take any action to reopen these investigations. OTAA will investigate and decide these petitions based on the group eligibility criteria of the 2011 Amendments. Workers covered under certifications of these petitions will be eligible for benefits and services under either the 2002 Program or the 2011 Program if they are receiving benefits under the 2002 Program before December 19, 2011, as explained below in sections A.2.3.1-A.2.4.1. There are no changes to the appeal procedures applicable to determinations denying certification of these petitions.

A.2.2.1 Workers Denied Group Eligibility to Apply for ATAA

No separate group eligibility certification is required for a worker to apply for RTAA under the 2011 Amendments. Therefore, OTAA does not need to reopen investigations of petitions in the range of TA-W-80,000-80,999 where the worker group was certified for TAA, but denied group eligibility to apply for ATAA. In these cases, workers covered under certifications of petitions numbered TA-W-80,000-80,999, who are eligible for benefits under the 2011 Program (as described in paragraphs A.2.3), will automatically be eligible to apply for RTAA beginning, as explained in Section A.2.3, below, on December 20, 2011.

A.2.3 Program Benefits for Workers Covered under Certifications of Petitions Numbered TA-W-80,000- 80,999

Statute: Section 231(a)(1)(B) of the TAAEA of 2011 reads:

(B) ELIGIBILITY FOR BENEFITS.—

(i) IN GENERAL.—Except as provided in clause (ii), a worker certified as eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974 pursuant to a petition described in subparagraph (A)(iii) shall be eligible, on and after the date that is 60 days after the date of the enactment of this Act, to receive benefits only under the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on such date of enactment.

Section 231(a)(1)(A)(iii), referred to above as "subparagraph (A)(iii)," reads:

> *(iii) Petition Described.—A petition described in this clause is a petition for a certification of eligibility for a group of workers filed under section 221 of the Trade Act of 1974 on or after February 13, 2011, and before the date of the enactment of this Act.*

Administration: In general, the benefits and services available under the 2011 Amendments will be available beginning on December 20, 2011, the date that is 60 days after October 21, 2011, to workers covered under certifications of petitions numbered TA-W-80,000-80,999.

A.2.3.1 2002 Program Benefits Available Between October 21, 2011 and December 20, 2011

Until December 20, 2011, workers covered under certifications of petitions numbered TA-W-80,000-80,999 will be eligible to apply for only the benefits and services available under the 2002 Program. The state must notify these workers that if they begin receiving benefits services available under the 2002 Program before that date, they will be given a choice to switch to the 2011 Program after December 20, 2011, as discussed in section A.2.4.

A.2.3.2 2011 Program Benefits Available On or After December 20, 2011

Workers covered under certifications of petitions numbered TA-W-80,000-80,999 who first apply for benefits and services on or after December 20, 2011, (the end of the 60-day period following enactment of the 2011 Amendments), are only eligible to apply for the benefits and services available under the 2011 Program. States must provide these workers timely notice that they are eligible to apply for the 2011 Program benefits and services.

A.2.3.3 Notice of 2011 Program Benefits Available on or After December 20, 2011 to Adversely Affected Incumbent Workers

Training is a benefit available to "adversely affected incumbent workers" under both the 2009 Program and the 2011 Program. TEGL No. 22-08, section D.2. defines "adversely affected incumbent worker" and explains the benefits available to these workers. Certifications of petitions numbered TA-W- 80,000-80,999 issued before October 21, 2011, do not include adversely affected incumbent workers because those certifications were made under the 2002 Amendments that were in effect at the time of certification. Under the 2011 Amendments, adversely affected incumbent workers become eligible for training as provided under the 2009 Amendments, beginning 60 days after enactment as discussed in paragraphs 2.3.and 2.4. The training benefit for adversely affected incumbent workers is explained in TEGL No. 22-08, sections D.2.2 – D.2.4. Adversely affected

incumbent workers also are eligible for part time training, as discussed in TEGL No. 22-08, section D.2.5.

OTAA will not amend these certifications issued before October 21, 2011, to expressly include adversely affected incumbent workers. However, states must contact the employers of workers covered by certifications of petitions in the 80,000- 80,999 series, obtain an expanded list of workers in the worker group who are threatened with separation but have not been separated from employment, determine which workers are adversely affected incumbent workers, and provide information to them about the availability of the training benefit under the 2011 Amendments beginning on December 20, 2011.

A.2.3.4 Notice of 2011 Program Benefits Available After December 20, 2011 to Older Workers

RTAA is a benefit available to older workers under the 2011 Program. States must automatically review determinations denying a worker covered under a certification of a petition numbered TA-W-80,000-80,999 individual eligibility for ATAA. If the denial was based on an eligibility criterion that does not apply to eligibility for RTAA (e.g., did not obtain full time employment by the 26th week after separation), then the state must notify the worker that the option to apply for benefits under the RTAA program may be available, as discussed in paragraph A.2.4 of this TEGL if the worker is receiving TAA benefits and services. States may provide information to the worker in a separate notice.

A.2.4 Workers Receiving Benefits under the 2002 Program Continue to Receive Benefits under the 2002 Program Unless They Elect to Change

A.2.4.1 Workers Eligible to Choose the 2002 Program or the 2011 Program

Statute: Section 231(a)(1)(B)(ii) of the TAAEA of 2011 reads:

(ii) ELECTION FOR WORKERS RECEIVING BENEFITS ON THE 60TH DAY AFTER ENACTMENT.—

(I) IN GENERAL.—A worker certified as eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974 pursuant to a petition described in subparagraph (A)(iii) who is receiving benefits under chapter 2 of title II of the Trade Act of 1974 as of the date that is 60 days after the date of the enactment of this Act may, not later than the date that is 150 days after such date of enactment, make a one-time election, to receive benefits pursuant to—

(aa) the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on such date of enactment; or

(bb) the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on February 13, 2011.

Administration: Beginning on December 20, 2011, workers who are covered under the certification of a petition numbered TA-W-80,000-80,999 and have not received benefits or services under the 2002 program as of this date will automatically become eligible for the 2011 Program, as described in paragraph 2.3. These workers will not be eligible for the 2002 Program.

For the 90-day period beginning on December 20, 2011, workers who are covered under the certification of a petition filed after February 13, 2011 (February 14, 2011) and on or before October 21, 2011, and are "receiving TAA benefits" (as defined below) on December 20, 2011, are eligible to choose to continue in the 2002 Program, or move to the 2011 Program, as described further below. These workers have a one-time opportunity, beginning on day 60 (December 20, 2011) and continuing through day 150 (March 19, 2011) after the Enactment Date (October 21, 2011), to choose coverage under either the 2002 Program or the 2011 Program. Therefore, workers eligible to choose must make this choice on or after December 20, 2011 and no later than March 19, 2012. Unless they make the choice discussed in this paragraph within the statutory time period, workers who are covered by petitions numbered TA-W-80,000-80,999 who have received benefits under the 2002 Program will continue to receive benefits under the 2002 Program.

The requirement that such workers must be offered a choice between the 2002 Program and the 2011 Program means that states must offer workers who have received a first TAA-funded benefit or service before the 60th day after the Enactment Date the choice of continuing with their existing 2002 Program benefits and services, or changing to the 2011 Program level of benefits and services. States must determine whether a worker "is receiving benefits under chapter 2 of title II of the Trade Act of 1974 as of the 60th day after enactment," which is December 20, 2011.

A worker is "receiving TAA benefits" under one or more of the following circumstances:

1. Training Waiver: A training waiver is in effect for the worker on December 20, 2011; or
2. Training: The worker has an approved training plan and is enrolled in training, participating in training, or has completed training by December 20, 2011; or
3. Job Search and Relocation Allowances: The worker has been approved for a job search or relocation allowance, even if the payment has not yet occurred on or before December 20, 2011; or
4. Trade Readjustment Allowances (TRA) and ATAA: The worker has received a payment of either TRA or ATAA for a week before, or for the week that includes, December 20, 2011.

Workers who fall into this category will be allowed to exercise a one-time election to either continue to receive benefits and services under the 2002 Program; or choose to apply for benefits and services available under the 2011 Program. States are required to notify eligible TAA enrollees of this one time election option and document their choice of program in a document, which must be retained in the worker's case file. States must provide workers with information on the benefits and services available under the 2002 Program and the 2011 Program and make available counseling services to discuss the pros and cons of each option as it applies to the worker's individual situation. States must develop an internal process to track under which program the worker is being served. This may include adding a suffix to the certification number in state case management systems to identify a worker who originally began receiving benefits and services under the 2002 Amendments, and later elected to begin receiving benefits and services under the 2011 Amendments.

Note that, HCTC is not a TAA-funded benefit and, under the 2002 Program, neither were employment and case management services. Therefore, workers who have received only HCTC or initial employment and case management services through the One-Stop system, and who have not received one or more of the benefits and services listed above, will not be eligible to choose to receive benefits and services under the 2002 Program. These workers will automatically receive benefits under the 2011 Program.

A.2.4.2 Workers Who Elect to Receive Benefits Under the 2011 Program-Computation of Maximum Benefits

Statute: Section 231(a)(1)(B)(ii)(III) of the TAAEA reads:

> *(III) COMPUTATION OF MAXIMUM BENEFITS.—Benefits received by a worker described in subclause (I) under chapter 2 of title II of the Trade Act of 1974, as in effect on February 13, 2011, before the worker makes the election described in that subclause shall be included in any determination of the maximum benefits for which the worker is eligible under the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on the date of the enactment of this Act, or as in effect on February 13, 2011, whichever is applicable after the election of the worker under subclause(I).*

Administration: Workers who elect to receive benefits under the 2011 Program on or after December 20, 2011 and before March 20, 2012, will transition from the 2002 Program to the 2011 Program beginning with the first week following the date on which the state documents that the worker made the choice. Any benefits or services received by the worker before the choice apply toward the maximum benefits the worker may receive under the 2011 Amendments. In particular, this includes both weeks of TRA and weeks of training received.

In general, for workers receiving benefits under the 2002 Program who have not enrolled in training and choose to move to the 2011 Program, the applicable training enrollment deadlines will be those described in TEGL No. 22-08. Such workers who were approved for a waiver of the training requirement under the 2002 Act based on Recall, Marketable Skills, or Retirement, who choose to move to the 2011 Program will no longer be eligible for that waiver. States must revoke those waivers, after the choice is made and the worker must be enrolled in training to continue to be eligible for TRA (or the state must issue a waiver under one of the reasons allowable under the 2011 Amendments). For workers whose waiver was revoked, the applicable deadline for training enrollment is the later of: the last day of the 26th weeks after the worker's most recent total separation or the last day of the 26th week after the date of the certification, or the Monday of the first week occurring 30 days after the date on which the state revoked the waiver, as described in TEGL No. 22-08.

When applicable, states must amend training plans of workers who have enrolled in training and choose to move to the 2011 Program to establish benchmarks necessary for states to determine whether those workers are eligible for Completion TRA, as described below in section C.3.

A.2.4.3 Eligible Workers Who Fail to Make an Election between December 20, 2011 and before March 19, 2012, Continue in the 2002 Program

Statute: Section 231(a)(2)(B)(ii)(II) of the TAAEA reads:

(II) EFFECT OF FAILURE TO MAKE ELECTION.—A worker described in subclause (I) who does not make the election described in that subclause on or before the date that is 150 days after the date of the enactment of this Act shall be eligible to receive benefits only under the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on February 13, 2011.

Administration: The window for exercising this one-time choice option closes on March 19, 2012, the date that is 150 days after enactment, and eligible workers who fail to make this choice will continue to receive benefits and services under the provisions in the 2002 Amendments. As appropriate, a worker who appeals the denial of a benefit under the 2011 Program based on a state's alleged failure to provide timely or complete notice of the choice option and deadline, may assert that equitable tolling applies to that deadline. TEGL No. 08-11 provides guidance on the application of the equitable tolling principle to TAA deadlines. The application of equitable tolling, as described in TEGL No. 08-11, applies to this deadline even though it was not named in the TEGL because it was not in effect on the date on which ETA issued the TEGL.

A.3 Petitions filed after October 21, 2011

A.3.1 2011 Program Benefits Available to Workers Covered by Certifications of Petitions filed on or after October 21, 2011

Statute: Section 201(b) of the TAAEA reads:

(b) APPLICABILITY OF CERTAIN PROVISIONS.—Except as otherwise provided in this subtitle, the provisions of chapters 2 through 6 of title II of the Trade Act of 1974, as in effect on February 12, 2011, and as amended by this subtitle, shall—

(1) take effect on the date of the enactment of this Act; and

(2) apply to petitions for certification filed under chapters 2, 3, or 6 of title II of the Trade Act of 1974 on or after such date of enactment.

Administration: Workers covered by certifications of petitions filed on or after October 21, 2011, are subject only to the provisions of the 2011 Amendments. OTAA has begun a new TA-W numbering series for petitions filed under the 2011 Amendments, beginning with TA-W-81,000. Workers covered by petitions filed on or after October 21, 2011, identified by a petition number greater than TA-W-81,000 are subject to the provisions of the 2011 Amendments, as implemented in these Operating Instructions, as well as regulations codified at 20 CFR parts 617 and 618, and 29 CFR part 90, to the extent that those regulations have not been superseded by the 2011 Amendments.

A.3.2 Extended Impact Date for Certifications of Petitions Filed Within 90 Days of October 21, 2011

Statute: Section 231(a)(3) of the Trade TAAEA reads:

(3) QUALIFYING SEPARATIONS WITH RESPECT TO PETITIONS FILED WITHIN 90 DAYS OF DATE OFENACTMENT.— Section 223(b) of the Trade Act of 1974, as in effect on the date of the enactment of this Act, shall be applied and administered by substituting "before February 13, 2010" for "more than one year before the date of the petition on which such certification was granted" for purposes of determining whether a worker is eligible to apply for adjustment assistance pursuant to a petition filed under section 221 of the Trade Act of 1974 on or after the date of the enactment of this Act and on or before the date that is 90 days after such date of enactment.

Administration: In general, certifications cover workers separated from employment up to one year before the date of the petition. This date is known as the "impact date" of the certification. The 2011 Amendments provide that all certifications of petitions filed within 90 days of the date of enactment of the 2011 Amendments, which is January 19, 2012, include workers separated on or after February 13, 2010, instead of

the one-year impact date that applies to certifications of all other petitions. For example, since the date of enactment is October 21, 2011, if the date of the petition is January 1, 2012, which is fewer than 90 days after October 21, 2011, a certification of that petition will cover workers separated on or after February 13, 2010. When a petition dated more than 90 days after the date of enactment (January 19, 2012) is certified, the one-year impact date will apply, and the certification will no longer cover workers separated more than one year before the petition date.

The determination documents certifying petitions clearly identify the impact date and expiration date for each certification, and will use the impact date of February 13, 2010, where appropriate. This means that workers covered by certifications of petitions filed between October 21, 2011 and January 19, 2012 will have an earlier impact date than certifications of petitions dated between February 14, 2011 and October 20, 2011. This could cause confusion and complaints when workers who were denied eligibility for TAA because they were laid off more than a year before the date of the petition, learn that there are other workers who were laid off more than a year before the date of the petition, who were determined to be eligible. States should be prepared to explain that this difference in treatment was directed by the statute.

B. GROUP ELIGIBILITY

The TAAEA generally restores the group eligibility requirements available under the 2009 Amendments, except that workers in a public agency are not eligible for certification. For more information on group eligibility benefits under the 2009 Amendments, see Section B of TEGL No. 22-08, pages A-4 through A-14. Except as noted, the provisions of Section B below apply to determinations made under the 2011 Amendments. Note that Section B.2 .of TEGL No. 22-08 does not apply under the 2011 Amendments.

Statute: Section 211(a)(1) of the TAAEA amends Section 222 of the Trade Act of 1974 (19 U.S.C. § 2272), Group Eligibility Requirements by striking subsection (b), Adversely Affected Workers in Public Agencies. Section 211(b) of the TAAEA amends Section 247 of the Trade Act of 1974 (19 U.S.C. § 2319) to redefine the term "Firm" in paragraph (3)(A), by striking "service sector firm, or public agency" and inserting "or service sector firm" and to strike the definition of "public agency."

Administration: Worker group coverage under the 2011 Act is restored to the coverage provided under the 2009 Act, with the exception of coverage for workers in public agencies. Trade-Affected Workers may include workers in firms that produce articles and workers in service sector firms, based on:

1. increased imports of like or directly competitive articles or services; or
2. increased imports of a finished article for which the workers' firm produces component parts or supplies services; or
3. increased imports of articles directly incorporating foreign components that are like or directly competitive with the component parts made by U.S. workers; or

4. shifts in production of articles or supply of services to any foreign country; or
5. workers in firms that supply component parts or services to firms with TAA-certified workers or perform additional, value-added production processes to firms with TAA-certified workers; or
6. workers in firms identified in International Trade Commission "injury" determinations.

The 2011 Amendments also eliminate separate group eligibility for Alternative Trade Adjustment Assistance, as RTAA is a benefit available to all eligible workers aged 50 and over covered under the TAA certification. See section H. below. Worker group coverage provisions are effective immediately.

C. CHANGES TO TRADE READJUSTMENT ALLOWANCES (TRA)

The Trade Adjustment Assistance Extension Act of 2011 generally restores the TRA benefits and eligibility available under the 2009 Amendments, but makes important changes. The maximum number of weeks of income support for workers in the 2002 Program is 130; 156 weeks for workers in the 2009 Program, and 130 weeks for workers in the 2011 Program. However, the eligibility requirements for the weeks of TRA available under the 2002 Program and the 2011 Program are different and those differences are explained below, along with the differences in TRA available under the 2009 Program. Note: Meeting training benchmarks is an eligibility requirement for Completion TRA, as explained below in section

C.3.1. For more information on TRA benefits under the 2009 Amendments, see Section C of TEGL No. 22-08, pages A-14 through A-30, and its Change 1. Except as noted below, the provisions of Section C apply to workers served under the 2011 Amendments. Note that sections C.3, C.5.1, and C.5.2 change significantly under the Trade Adjustment Assistance Extension Act of 2011.

C.1. Elimination of Remedial TRA

The eligibility period for the receipt of TRA is not extended for weeks of participation in remedial or prerequisite training (as it was under the 2009 Amendments), and the 26 weeks of TRA referred to as Remedial TRA is no longer payable.

Statute: Section 213 of the TAAEA amends Section 233 of the Trade Act of 1974 (19 U.S.C. § 2293), Limitations on Trade Readjustment Allowances, by replacing the language in subsection (f) authorizing Remedial TRA for workers in training including remedial and/or prerequisite coursework with language authorizing Completion TRA. Section 213(f) appears below under section C.3.

Administration: The TAAEA eliminates Remedial TRA as a "category" of TRA, although remedial and prerequisite training should continue to be part of an approved training plan where appropriate. However, the inclusion of remedial and prerequisite training in a worker's training plan will no longer result in the worker's eligibility for up to 26 additional weeks of TRA.

Workers covered under certifications of petitions numbered TA-W-80,000-80,999, who have been approved for Remedial TRA as part of their approved training plan under the 2002 Program, will continue to be eligible for such payments if they do not exercise their choice to change to the 2011 Program, as discussed above in section A.2.4.

C.2 Reductions in Weeks of Additional TRA

The TAAEA changes the maximum number of Additional TRA weeks payable to 65, a reduction from the maximum of 78 weeks payable under the 2009 Amendments. Additionally, the maximum of 65 weeks of payments are payable over a period of 78 weeks, a reduction from the 91-week eligibility period under the 2009 Amendments.

Statute: Section 213 of the TAAEA amends Section 233(a)(3) of the Trade Act to read:

(3) Notwithstanding paragraph (I), in order to assist the adversely affected worker to complete a training program approved for the worker under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 65 additional weeks in the 78-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 78-week period during which the individual is participating in such training.

Administration: A maximum of 65 weeks of Additional TRA are payable over a 78-consecutive calendar week eligibility period. This 78-week eligibility period follows the last week of entitlement to Basic TRA or begins with the first week of TAA-approved training, if that training begins after the last week of the exhaustion of Basic TRA. The other eligibility provisions for Additional TRA contained in the 2009 Amendments apply. These provisions are discussed in TEGL No. 22-08, section C.5.2.

C.3 Availability of Completion TRA

The TAAEA establishes a new category of TRA, referred to here as "Completion TRA," to provide up to 13 more weeks of income support for a worker who has exhausted the maximum 65 weeks of Additional TRA and requires a longer period of income support to complete an approved training program. Workers eligible for Completion TRA must have met training benchmarks described in paragraph C.3.1.

Statute: Section 213 of the TAAEA amends the section 233(f) of the Trade Act to read:

(f) PAYMENT OF TRADE READJUSTMENT ALLOWANCES TO COMPLETE TRAINING – Notwithstanding any other provision of this section, in order to assist an

adversely affected worker to complete training approved for the worker under section 236 that leads to the completion of a degree or industry-recognized credential, payments may be made as trade readjustment allowances for not more than 13 weeks within such period of eligibility as the Secretary may prescribe to account for a break in training or for justifiable cause that follows the last week for which the worker is otherwise entitled to a trade readjustment allowance under this chapter if --

(1) payment of the trade readjustment allowance for not more than 13 weeks is necessary for the worker to complete the training;

(2) the worker participates in training in each such week; and

(3) the worker –

(A) has substantially met the performance benchmarks established as part of the training approved for the worker;

(B) is expected to continue to make progress toward the completion of the training; and

(C) will complete the training during that period of eligibility.

Administration: Under the 2011 Amendments, in addition to Basic TRA and Additional TRA, up to 13 weeks of Completion TRA may be payable to assist a worker to complete training that leads to a degree or industry-recognized credential. Assuming a worker meets the other TRA eligibility requirements, the worker qualifies for up to 13 weeks of Completion TRA where all of the following five criteria are met:

1. The requested weeks are necessary for the worker to complete a training program that leads to completion of a degree or industry-recognized credential, as described in TEGL No. 15-10; and
2. The worker is participating in training in each such week; and
3. The worker has substantially met the performance benchmarks established in the approved training plan (see section C.3.1); and
4. The worker is expected to continue to make progress toward the completion of the approved training; and
5. The worker will be able to complete the training during the period authorized for receipt of Completion TRA (see section C.3.2).

These requirements are applied at the time the state approves payment for a week of Completion TRA. If, during the period in which a worker is eligible to receive Completion TRA, the worker ceases to meet any of the five conditions listed above, the state may no longer pay Completion TRA. For example, if a worker has been meeting training benchmarks and was expected to complete training within the established period, but at the point of payment of week 5, there is an indication that training will not be completed within the established period, Completion TRA payments will cease. However, weeks of Completion TRA previously paid based on information that was correct at the time of payment are properly paid, and therefore states must not treat them as overpayments.

C.3.1 Training Benchmarks to Meet Completion TRA Eligibility Requirements

To implement Completion TRA under the 2011 Amendments, a state must establish training benchmarks for a worker when the worker enrolls in training to be able to monitor the worker's progress toward completing the approved training within the 130-week maximum duration of training, as described below in section D. The worker must substantially meet benchmarks to receive Completion TRA and, therefore, benchmarks must be included in all but short-term training plans. These benchmarks must be flexible enough to allow for some variability (e.g., a single course failure or missed week of attendance should not make the worker ineligible), and both practical and measurable enough to allow administration across a broad spectrum of training scenarios and state environments. These benchmarks are related to, but differ from, the requirement that a worker "participate in training" as a condition of eligibility for TRA. "Participation in training" merely requires that a worker must attend scheduled classes, required events or otherwise follow the rules of the training program in accordance with the requirements documented by the training institution, while benchmarks measure satisfactory progress of the worker who is participating in training.

In order to determine that the worker has "substantially met the performance benchmarks established in the approved training plan" states must evaluate satisfactory progress against only the following two benchmarks at intervals of no more than 60 days, beginning with the start of the training plan, to determine whether the worker is:

1. maintaining satisfactory academic standing (e.g. not on probation or determined to be "at risk" by the instructor or training institution), and
2. on schedule to complete training within the timeframe identified in the approved training plan.

For this review, a state may request the training vendor to provide documentation of the worker's satisfactory progress. The case manager may attest to the worker's satisfactory progress after consultation with the vendor and the worker. The state may request that the worker provide documentation of the worker's satisfactory progress towards meeting the training benchmarks from the vendor, such as through instructor attestations.

Regardless of the mechanisms used, the training benchmarks must be described in the worker's Individual Employment Plan.

Upon one substandard review of the established benchmarks, the worker will be given a warning, while two substandard reviews must result in a modification to the training plan, or the worker will no longer be eligible for Completion TRA. In this way, the training benchmarks may be used to provide early intervention that will provide the opportunity to determine whether the training plan in place is appropriate for the individual or would be prudent to revise.

In cases where a state denies payment of Completion TRA because the worker has not made satisfactory progress towards completing benchmarks, a worker may appeal the determination through the same appeal process available when other claims for TRA are denied.

C.3.2 Completion TRA Eligibility Period Established by the Secretary

The amended section 233(f) of the Trade Act gives the Secretary discretion to establish the eligibility period within which the 13 weeks of Completion TRA are payable and training must be completed in order to meet the Completion TRA eligibility requirements. In order to account for breaks in training, the Secretary has determined that the eligibility period for Completion TRA will be the 20-week period beginning with the first week in which a worker files a claim for Completion TRA.

"Justifiable cause," as used in section 233(f) of the Trade Act, is interpreted as having the same meaning as used in section 233(h) of the Act. That section provides for the extension of the eligibility periods for basic and additional TRA when the Secretary determines there is "justifiable cause." Accordingly, the definition of "justifiable cause" for section 233(h) in TEGL No. 22-08, section C.6.2, applies to section 233(f). "Justifiable cause" means circumstances beyond the worker's control. Examples of justifiable cause for extending the Completion TRA eligibility period include situations where the provider changes the requirements of a training program while the program is in progress, where a course or courses are cancelled, and where required courses are not offered in accordance with the originally anticipated schedule, and the state is unable to identify an alternative that will allow for completion of the training program within the 20 week period. However, an extension will not increase the maximum number of payable Completion TRA weeks above 13.

C.3.3 Completion TRA Eligibility for Workers Choosing the 2011 Program

Workers covered under certifications of petitions filed after February 13, 2011 (February 14, 2011), and on or before October 21, 2011, who receive benefits and services under the 2002 program until December 20, 2011, and who choose to change to the 2011 Program, as discussed in paragraph A.2.3 above. The same requirements for Completion TRA that apply to workers covered under certifications of petitions filed after the date of enactment will apply to these workers. Accordingly, where a worker changes to the 2011 Program, the state must take prompt action to review the training plan already in place for that worker. Unless the approved plan is for very short-term training, such as a 3-month certificate program, the state must amend that plan to establish benchmarks to determine the worker's satisfactory progress towards meeting those benchmarks for the worker to receive the maximum 13 weeks of Completion TRA.

C.4 Maximum Number of Weeks of TRA

The maximum number of weeks of TRA for which a worker may be eligible includes the maximum number of weeks payable for Basic TRA, Additional TRA and Completion TRA, or 130 weeks. Basic TRA is payable for up to 52 weeks following separation, minus any weeks of unemployment insurance (UI) to which the worker was entitled (or would have been entitled if the worker had applied) in the first benefit period, to workers who completed or are enrolled in or participating in TAA-approved training, or are covered under one of the remaining training waivers. Following Basic TRA eligibility, up to 65 weeks of Additional TRA is payable in the 78-week period that follows the last week of entitlement to Basic TRA or beginning with the first week of approved training if the training begins after the last week of entitlement to Basic TRA. Additional TRA remains payable to only those trade-affected workers actually participating in TAA-approved training. With the addition of Completion TRA, workers who meet the eligibility requirements discussed in C.3.1 and who are actually participating in TAA-approved training may receive up to another 13 weeks of TRA, bringing the total maximum number of weeks of TRA payable to 130 weeks.

C.5. Reduction in Types of Waivers of the Training Requirement

Basic TRA is only payable if a worker is enrolled in TAA-approved training, is participating in TAA-approved training, has received a waiver of the requirement to participate in TAA-approved training, or has completed TAA-approved training. Under both the 2002 Amendments and the 2009 Amendments, a state may issue a waiver of the training requirement for Basic TRA after determining that training is not feasible or appropriate for the worker for the following six reasons:

(1) Recall. – The worker has been notified that the worker will be recalled by the firm from which the separation occurred.

(2) Marketable Skills—

(i) In General.—The worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U.S.C. 503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

(ii) Marketable Skills Defined.—For purposes of clause (i), the term 'marketable skills' may include the possession of a postgraduate degree from an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) or an equivalent institution, or the possession of an equivalent postgraduate certification in a specialized field.

(3) Retirement. – The worker is within 2 years of meeting all requirements for entitlement to either –

(i) old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et. seq.) (except for application therefor); or

(ii) a private pension sponsored by an employer or labor organization.

(4) Health. – The worker is unable to participate in training due to the health of the worker, except that this basis for a waiver does not exempt a worker from the availability for work, active search for work, or refusal to accept work requirements under Federal or State unemployment compensation laws.

(5) Enrollment Unavailable. – The first available enrollment date for the worker's approved training 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 under guidelines issued by the Secretary.

(6) Training Not Available. – Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2302), and employers), no suitable training for the worker is available at reasonable cost, or no training funds are available.

Under the 2011 Amendments, states may no longer issue waivers on the grounds of: 1) Recall, 2) Marketable Skills, or 3) Retirement. The three remaining grounds for which states can issue waivers are: 1) Health, 2) Enrollment Not Available, and 3) Training Not Available.

Statute: Section 212(a) of the TAAEA amends section 231(c) of the Trade Act of 1974 (19 U.S.C. § 2291), Waivers of Training Requirements, to read:

(C)WAIVERS OF TRAINING REQUIREMENTS.—

(1) ISSUANCE OF WAIVERS—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) if the Secretary determines that it is not feasible or appropriate for the worker, because of 1 or more of the following reasons:

(A) HEALTH—The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a 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.

(B) ENROLLMENT UNAVAILABLE.—The first available enrollment date for the approved training of the 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 Secretary.

(C) TRAINING NOT AVAILABLE—Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1 998 (20 U.S.C. 2302), and employers), no training that is suitable for the worker is available at a reasonable cost, or no training finds are available.

Administration: Basic TRA is only payable if an individual is enrolled in TAA-approved training, participating in TAA-approved training, has received a waiver of the requirement to participate in training, or has completed TAA-approved training.

A state may not grant a worker a waiver of the training requirement for Basic TRA on the basis of three of the six alternative criteria in effect under the 2002 Amendments and 2009 Amendments and described in TEGL No. 11-02, section D.3 and TEGL No. 22-08, section, section C.3 of Attachment A, respectively: Recall, Marketable Skills, or Retirement. A state may continue to issue waivers available under the remaining criteria established under the 2002 Amendments: Health of the Worker, Enrollment Not Available, and Training Not Available. Therefore, workers who meet the requirements of these waiver provisions, as described in TEGL No. 11-02, section D.3, may still be eligible for Basic TRA without enrolling in training.

C.6. Establishment of a Federal Good Cause Provision for Waiving Certain Time Limits

The TAAEA establishes a new Federal "good cause" provision that allows for a waiver for good cause of deadlines relating to time limitations on filing an application for TRA or enrolling in training. This provision supersedes the state good cause provision applicable to these deadlines under the 2009 Amendments, as described in section C.7 of TEGL No. 22-08.

Statute: Section 212(b) of the TAAEA amends section 234(b) of the Trade Act of 1974 (19 U.S.C. § 2294) to read:

(b) Special Rule on Good Cause for Waiver of Time Limits or Late Filing of Claims. — The Secretary shall establish procedures and criteria that allow for a waiver for good cause of the time limitations with respect to an application for a trade readjustment allowance or enrollment in training under this chapter.

Administration: Under the 2011 Amendments, states must waive the time limitations with respect to an application for a trade readjustment allowance or enrollment in training at any time after making a determination that there is good cause for issuing a waiver, in accordance with the federal standard. The federal standard requires states to consider the following factors, if relevant, before waiving these time limitations. These factors are:

1. Whether the worker acted in the manner that a reasonably prudent person would have acted under the same or similar circumstances.
2. Whether the worker received timely notice of the need to act before the deadline passed.
3. Whether there were factors outside the control of the worker that prevented the worker from taking timely action to meet the deadline.
4. Whether the worker's efforts to seek an extension of time by promptly notifying the state were sufficient.
5. Whether the worker was physically unable to take timely action to meet the deadline.
6. Whether the worker's failure to meet the deadline was because of the employer warning, instructing or coercing 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 worker's failure to meet the deadline was because the worker reasonably relied on misleading, incomplete, or erroneous advice provided by the state.
8. Whether the worker's failure to meet the deadline was because the state failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker's entitlement to TRA.
9. Whether there were other compelling reasons or circumstances which would prevent a reasonable person under the circumstances presented from meeting a deadline for filing an application for TRA or enrolling in training including:

    - neglect, a mistake, or an administrative error by the state,
    - illness or injury of the worker or any member of the worker's immediate family
    - the unavailability of mail service for a worker in a remote area
    - a natural catastrophe such as an earthquake or a fire or flood
    - an employer's failure or undue delay in providing documentation, including instructions, a determination or notice or pertinent and important information
    - 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
    - the state failed to effectively communicate in the worker's native language and the worker has limited understanding of English
    - loss or unavailability of records due to a fire, flood, theft or 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.

In cases where the cause of the worker's failure to meet the deadline for applying for TRA or enrolling in training was the worker's own negligence, carelessness, or procrastination, a state may not find that good cause exists to allow the state to waive these time limitations.

D. TRAINING

The TAAEA generally restores the provisions of the 2009 Amendments on training, including the availability of pre-separation and part-time training, but makes important changes, as explained below. For more information on Training under the 2009 Program, see TEGL No. 22-08, section D. Please note changes to the guidance in sections D.1 and D.4 of TEGL No. 22-08, as explained below; however, all other paragraphs in section D. continue to apply.

D.1. Establishing Training Benchmarks

States must establish benchmarks at the beginning of the worker's training program, where the approved training program will extend beyond the duration of available Basic and Additional TRA, in order to establish eligibility for Completion TRA. In order to ensure workers have access to Completion TRA, if needed, States must establish

benchmarks in all but very short-term training, such as a 3-month certificate program, because the establishment of benchmarks is a useful practice, which may be required later in the worker's training if unanticipated circumstances arise. Inclusion of benchmarks in the training plan should be considered when the training plan is initially established, and, in the unusual event that benchmarks are not included in the initial plan, any time the plan is amended.

D.2. Length of Training

The 2011 Amendments do not include a specific limitation on the length of an approvable training program for a Trade-Affected Worker. However, 20 CFR 617.22(f)(2) limits the maximum length of approvable training to 104 weeks (during which training is conducted), so that a training program would not extend too far beyond the worker's TRA. In this respect, the 2011 Act does not change the Trade Act. However, consistent with TEGL No. 11-02 and TEGL No. 22-08, we interpret the 2011 Amendments as allowing the maximum length of an approvable training program to match the maximum number of payable weeks of income support (UI plus TRA), or 130 weeks during which training is conducted.

This limitation aligns the maximum durations of training and income support, and reflects the fact that for most workers, the availability of income support is critical to the ability of the worker to complete a training program. However, most workers will not have a full 130 weeks of income support available at the beginning of training; rather most workers will have used some weeks of income support, such as 26 weeks or more of unemployment insurance, before the first week in which training occurs. We interpret the 2011 Amendments as permitting approval of training extending beyond the weeks of TRA available to the individual worker, as described in section D.5.1 of TEGL No. 22-08. However, the appropriate length of training will depend on individual circumstances, and Completion TRA is only available to workers whose training program will be completed within the eligibility period established in Section C.3.2 above.

D.3. Cap on Funding for TAA Training, Other Benefits and Services, and Administration

The annual cap on funds available to states under section 236 of the Trade Act is $575 million for FY 2012 and FY 2013, and is a pro-rated portion of this amount for the first quarter of FY 2014. Effective FY 2012, however, the 2011 Amendments provide that funding for job search allowances, relocation allowances, case management and employment services, and state administration of these benefits, as well as training, are included under that cap. While this change reduces the amount of funding available for training, it allows states flexibility to use the available funds to provide the best mix of services and benefits for Trade-Affected Workers in their respective states.

Statute: Section 214(a) of the TAAEA amends section 236(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. § 2296) to read:

(2)(A) The total amount of funds available to carry out this section and sections 235, 237, and 238 shall not exceed—

(i) $575,000,000 for each of fiscal years 2012 and 2013; and

(ii) $143,750,000 for the 3-month period beginning on October 1, 2013 and ending on December 31, 2013.

Statute: Section 214(c) of the TAAEA amends section 245 of the Trade Act of 1974 (19 U.S.C. § 2317) to read:

(c) REALLOTMENT OF FUNDS.—

(1) IN GENERAL.—The Secretary may—

(A) reallot funds that were allotted to any State to carry out sections 235 through 238 and that remain unobligated by the State during the second or third fiscal year after the fiscal year in which the funds were provided to the State; and

(B) provide such realloted funds to States to carry out sections 235 through 238 in accordance with procedures established by the Secretary.

Administration: A state's allocation of its portion of the funds available under the $575 million cap in funding for training, job search allowances, relocation allowances, employment and case management services, and associated administration costs is subject to two conditions. Under section 235A, quoted below in section G, not more than 10 percent of a state's allocation may be used for administration, and at least 5 percent must be used to provide case management and employment services. Therefore, a state may use more than 5 percent of its allocation to provide case management and employment services if it determines that greater funds are needed to provide such services to adversely affected workers in its state.

In addition, the 2011 Amendments provide authority for ETA to recapture unexpended TAA funds from states that have not fully used their funding in the second and third year, and reallocate those funds to states with a demonstrated pattern of need.

Further clarification about funding changes will be provided in guidance on the FY 2012 funding allocation.

E. JOB SEARCH ALLOWANCES

The 2011 Amendments may significantly change a state's administration of job search allowances. The statutory changes provide greater flexibility to states by allowing them to decide whether to offer workers the opportunity to apply for job search allowances, in accordance with the amounts of allowance and maximum payment conditions described in the section below. The 2011 Amendments do not restore the level of job search allowances under the 2009 Amendments, but set the level as no more than the level of job search allowances under the 2002 Amendments. However, the provisions of 20 CFR 617.30 through 617.35 continue to apply to the delivery of these allowances.

Statute: Section 214(d)(1) of the TAAEA amends section 237(a) of the Trade Act of 1974 (19 U.S.C. § 2297) to read:

(a) JOB SEARCH ALLOWANCE AUTHORIZED.—

(1) IN GENERAL.—Each State may use funds made available to the State to carry out sections 235 through 238 to allow an adversely affected worker covered by a certification issued under subchapter A of this chapter to file an application with the Secretary for payment of a job search allowance.

Statute: Section 214(d)(2) of the TAAEA amends section 237(b) of the Trade Act of 1974 (19 U.S.C. § 2297) to read:

(b) AMOUNT OF ALLOWANCE.—

(1) IN GENERAL.—Any allowance granted under subsection (a) shall provide reimbursement to the worker of not more than 90 percent of the necessary job search expenses of the worker as prescribed by the Secretary in regulations.

(2) MAXIMUM ALLLOWANCE.—Reimbursement under this subsection may not exceed $1,250 for any worker.

Statute: Section 214(d)(3) of the TAAEA amends section 237(c) of the Trade Act of 1974 (19 U.S.C. § 2297) to read:

(c) EXCEPTION.—Notwithstanding subsection (b), a State may reimburse any adversely affected worker for necessary expenses incurred by the worker in participating in a job search program approved by the Secretary.

Administration: Job search allowances are no longer entitlements for workers who meet the eligibility requirements. Instead, states have discretion to decide whether to offer job search allowances as a benefit for workers served under the 2011 Program. In addition, states will no longer receive separate funds for job search allowances, but will receive one allocation that may be used for training, job search allowances, relocation allowances, case management and employment services, and associated administration costs.

The 2011 Amendments retain the discretion of the Secretary to prescribe regulations for the reimbursement of the cost of necessary job search expenses, but provides that the amount of the allowance may reimburse the worker for "not more than 90 percent" of such expenses. The regulations governing the administration of job search allowances published at 20 CFR 617.30 through 617.35 remain in effect until such time as they are amended through notice and comment rulemaking to address the statutory change in section 237(c) of "90 percent" to "not more than 90 percent." Section 617.35(a) provides for the computation of the amount of a job search allowance as "90 percent of the total costs including each of the following allowable transportation and subsistence items" enumerated in that regulation. Because that regulation is not inconsistent with the 2011 Amendments, it will continue to apply to job search allowances issued under the 2011 Program where states choose to offer them as a benefit. However, because the 2011 Amendments provide a higher maximum reimbursement

amount for a job search allowance, the "$800" in section 617.34(b) is interpreted to be "$1,250." Note that job search allowances remain an entitlement for workers served under the 2002 Program or the 2009 Program.

F. RELOCATION ALLOWANCES

The 2011 Amendments may significantly change a state's administration of relocation allowances. The statutory changes provide greater flexibility to states by allowing them to decide whether to offer workers the opportunity to apply for relocation allowances, in accordance with the amounts of allowance and maximum payment conditions described in the section below. The 2011 Amendments do not restore the level of relocation allowances of the 2009 Amendments, but set the level as no more than the level of relocation allowances under the 2002 Amendments. However, the provisions of 20 CFR 617.40 through 617.48 continue to apply to the delivery of these allowances.

Statute: Section 214(e)(1) of the TAAEA amends section 238(a) of the Trade Act of 1974 (19 U.S.C. § 2298) to read:

(a) RELOCATION ALLOWANCE AUTHORIZED.—

(1) IN GENERAL.—Each State may use funds made available to the State to carry out sections 235 through 238 to allow an adversely affected worker covered by a certification issued under subchapter A of this chapter to file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this section.

Statute: Section 214(e)(2) of the TAAEA amends section 238(b) of the Trade Act of 1974 (19 U.S.C. § 2298) to read:

(b) AMOUNT OF ALLOWANCE— Any relocation allowance granted to a worker under subsection (a) shall include —

(1) not more than 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 236(b) (1) and (2) specified in regulations prescribed by the Secretary), incurred in transporting the worker, the worker's family, and household effects; and

(2) a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,250.

Administration: Relocation allowances are no longer entitlements for workers who meet the eligibility requirements. Instead, states have discretion on whether to offer relocation allowances as a benefit for workers served under the 2011 Program. In addition, states will no longer receive separate funds for relocation allowances, but will receive one allocation that may be used for training, job search allowances, relocation allowances, case management and employment services, and associated administration costs.

The 2011 Amendments retain the discretion of the Secretary to prescribe regulations for the reimbursement of the cost of necessary expenses, but provide that the amount of the allowance may reimburse the worker for "not more than 90 percent" of such expenses and a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,250. The regulations governing the administration of relocation allowances published at 20 CFR 617.40 through 617.48 remain in effect until such time as they are amended through notice and comment rulemaking to address the statutory change in section 237(c) of "90 percent" to "not more than 90 percent." Sections 617.45 through 617.48 provide for the computation of the amount of a relocation allowance as 90 percent of allowable items reduced by any amount the individual is entitled to be paid or reimbursed for such expenses from any other source, and defines the items allowable, the computation of the travel allowance, and the computation of the moving allowance. Because those regulations are not inconsistent with the 2011 Amendments, they will continue to apply to relocation allowances issued under the 2011 Program where states choose to offer them as a benefit. However, because the 2011 Amendments provide a higher maximum reimbursement amount for a relocation allowance, the "$800" in section 617.45(a)(3) is interpreted to be "$1,250." Note that relocation allowances remain an entitlement for workers being served under the 2002 Program or the 2009 Program.

G. EMPLOYMENT AND CASE MANAGEMENT SERVICES

The TAAEA restores the employment and case management service provisions of section 235A of the 2009 Amendments, except for funding for this entitlement as discussed in section D above. The 2011 Amendments apply to TAA funds only, and not to funds available to states under the WIA, or the Wagner-Peyser Act, which also may be used to provide employment and case management services to adversely affected workers in accordance with WIA regulations. For additional information on employment and case management service under the 2009 Amendments, see TEGL No. 22-08, section G. Except as noted below, the provisions of section G apply to workers served under the 2011 Amendments. Note that section G.2 changes as described below.

Statute: Section 214(b) of the TAAEA amends section 235A of the Trade Act of 1974 (19 U.S.C. § 2295a) to read:

Of the funds made available to a State to carry out sections 235 through 238 for a fiscal year, the State shall use ---

(1) not more than 10 percent for the administration of the trade adjustment assistance for workers program under this chapter, including for ---

(A) processing waivers of training requirements under section 231;

(B) collecting, validating, and reporting data required under this chapter; and

(C) providing reemployment trade adjustment assistance under section 246; and

(2) not less than 5 percent for employment and case management services under section 235.

Administration: States are once again required to make employment and case management services available to adversely affected workers and adversely affected incumbent workers. These services may be provided using TAA funds or through agreements with partner programs. However, states will no longer receive separate funds for employment and case management services, but will receive one allocation that may be used for training, job search allowances, relocation allowances, employment and case management services, and associated administration costs. States may use the funds provided to provide case management services to meet the needs of Trade-Affected Workers. Note that the 2011 Amendments require that states spend at least 5 percent of the funds received for these purposes to provide employment and case management services. The additional $350,000 in separate case management funding for each state available under the 2009 Amendments has been eliminated.

H. REEMPLOYMENT TRADE ADJUSTMENT ASSISTANCE (RTAA) PROVISIONS

The TAAEA restores RTAA, a wage supplement option available to older workers. However the TAAEA changed the benefit levels and income limit. RTAA provides income support to eligible workers over the age of 50 who find jobs that pay lower wages than the job from which they were separated. RTAA subsidizes a portion of the wage difference between their new wages and their old wages. Changes to RTAA under the 2011 Amendments are explained below. For additional information on RTAA under the 2009 Amendments, see TEGL No. 11-02, Section H. Except as noted below, the provisions of Section H apply to workers served under the 2011 Amendments. Note that Sections H.3 and H.5 change as described below.

Under the 2011 Amendments, the maximum benefit amount is up to $10,000, paid over a period of up to two years. To be eligible for RTAA, a worker must earn less $50,000 in annual salary when reemployed, and must meet other eligibility criteria that also applied to ATAA applicants.

Statute: Section 215 of the TAAEA reads:

(a) IN GENERAL.—Section 246(a) of the Trade Act of 1974 (19 U.S.C. 2318(a)) is amended—

(1) in paragraph (3)(B)(ii), by striking ''$55,000'' and inserting ''$50,000''; and

(2) in paragraph (5)—

(A) in subparagraph (A)(i), by striking ''$12,000'' and inserting ''$10,000''; and

(B) in subparagraph (B)(i), by striking ''$12,000'' and inserting ''$10,000''.

Administration: The TAAEA reinstates the structure of the RTAA program under the 2009 Program, but at the income eligibility limit and maximum benefit amount of the ATAA program. Under the 2011 Amendments, the new employment that qualifies the worker for RTAA must not pay more than $50,000 annually. Under the 2011 Amendments, the maximum benefit amount is up to $10,000, paid over up to two years.

Under the 2011 Amendments, RTAA does not require a separate group certification and workers may receive training while receiving this benefit, as explained in TEGL No. 22-08 and its Change 1.

I. STATE OPERATIONS.

The TAAEA reinstates the State Operations provisions explained in TEGL No. 22-08, Section II, including the alien verification requirements and the requirement to implement control measures. The TAAEA changes the performance measures and reporting requirements; however, those changes do not go into effect until FY 2013. ETA will issue further instructions to states to allow ample time for programming these changes before October 1, 2012.

J. HEALTH COVERAGE TAX CREDIT (HCTC)

Subtitle B of the TAAEA retroactively reinstates a number of HCTC enhancements that were available to workers under the 2009 Program, and increases the credit rate from 65 percent under the 2002 Program to 72.5 percent reimbursement of health insurance costs for eligible participants. This HCTC is retroactive to February 13, 2011 for workers who were eligible during that time period, and payment for monthly premiums going forward will apply to coverage months beginning with the month 30 days after enactment of the 2011 Amendments. These changes apply to all eligible workers, regardless of whether they are being served under the 2002 Program, the 2009 Program, or the 2011 Program, including workers who choose to switch from the 2002 Program to the 2011 Program and those who remain in the 2002 Program. For additional information on HCTC provisions under the 2009 Program, see UIPL No. 21-09 and http://www.irs.gov/individuals/article/0,,id=187948,00.html.

Administration: The Internal Revenue Service administers the HCTC, which helps "eligible TAA recipients" and "eligible alternative TAA recipients" and other eligible workers and their families pay for their qualified health insurance premiums. "Eligible alternative TAA recipients" includes ATAA recipients and RTAA recipients. The TAAEA restores the "Special Rule" as described in UIPL No. 21-09 that expands the definition of an "eligible TAA recipient." An eligible TAA recipient continues to be a worker who receives Trade Readjustment Allowances (TRA) for any day of a month (and the next subsequent month) or who would receive TRA but for the fact that s/he has not exhausted UI entitlement, and is potentially eligible for HCTC for that month.

The restored special rule expands that definition to also include: 1) a worker who is in a break in approved training that exceeds 30 days, and the break falls within the period for receiving TRA provided under the section 233 of the Trade Act; or, 2) who is receiving UI for any day of such month and would be eligible to receive TRA (except that s/he has not exhausted UI) for such month, without regard to the enrollment in training requirements.

In operating the 2011 Program, states should apply the instructions in UIPL No. 21-09 for identifying "eligible TAA recipients." In addition, the TAAEA restores the continued qualification of family members after certain events as provided under the 2009 Program. Finally, the TAAEA also restores Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits for TAA eligible workers provided under the 2009 Program.

6. Financial Reporting. ETA will provide additional guidance to states about the financial reporting requirements under the TAAEA, including clarifications for the ETA 9130.

7. Sunset Provisions. The 2011 Amendments sunset on December 31, 2013, after which date the 2011 Amendments will no longer apply to the Trade Act and the provisions of the 2002 Amendments, with three provisions of the 2011 Amendments listed below, will apply. The "reverted TAA program" established under the sunset provisions of the TAAEA, is authorized to be in effect from January 1, 2014, through December 31, 2014.

Administration: The reverted TAA program retains the following provisions of the 2011 Amendments:

- Retains the elimination of training waivers based on recall, marketable skills, and retirement.
- Retains the elimination of the additional 26 weeks of TRA for workers participating in prerequisite or remedial training.
- Retains the authority for the Secretary to provide up to 13 weeks of additional TRA, (Completion TRA) for qualifying workers.

ETA will issue instructions to implement the reverted TAA program, as necessary.

8. Paperwork Reduction Act (PRA) Statement. The information collections referenced in this TEGL have been approved by the OMB under Control Number 1205-0342, expires 01/31/2013 and 1205-0392, expires 04/30/2013. According to the PRA, no persons are required to respond to a collection of information unless such collection displays a valid OMB Control Number. 44 U.S.C. 3507. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue, N.W., Room N-5428, Washington, DC 20210 and reference OMB Control Number 1205-0342 or 1205-0392.

9. Action Requested. States will inform all appropriate staff of the contents of these instructions.

10. Inquiries. Please direct all inquiries to the appropriate Regional Office.