

## Employment and Training Administration, Labor

## § 617.3

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- AUTHORITY: 19 U.S.C. 2320; Secretary's Order No. 3-81, 46 FR 31117.
- SOURCE: 51 FR 45848, Dec. 22, 1986, unless otherwise noted.

### Subpart A—General

#### § 617.1 Scope.

The regulations in this part 617 pertain to:

- (a) Adjustment assistance, such as counseling, testing, training, placement, and other supportive services for workers adversely affected under the terms of chapter 2 of title II of the Trade Act of 1974, as amended (hereafter referred to as the Act);
- (b) Trade readjustment allowances (hereafter referred to as TRA) and other allowances such as allowances while in training, job search and relocation allowances; and
- (c) Administrative requirements applicable to State agencies to which such individuals may apply.

#### § 617.2 Purpose.

The Act created a program of trade adjustment assistance (hereafter referred to as TAA) to assist individuals, who became unemployed as a result of

increased imports, return to suitable employment. The TAA program provides for reemployment services and allowances for eligible individuals. The regulations in this part 617 are issued to implement the Act.

#### § 617.3 Definitions.

For the purposes of the Act and this part 617:

(a) *Act* means chapter 2 of title II of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 1978, 2019-2030 (19 U.S.C. 2271-2322), as amended.

(b) *Adversely affected employment* means employment in a firm or appropriate subdivision of a firm, including workers in any agricultural firm or subdivision of an agricultural firm, if workers of such firm or appropriate subdivision are certified under the Act as eligible to apply for TAA.

(c) *Adversely affected worker* means an individual who, because of lack of work in adversely affected employment:

- (1) Has been totally or partially separated from such employment; or
- (2) Has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

(d) *Appropriate week* means the week in which the individual's first separation occurred.

(e) *Average weekly hours* means a figure obtained by dividing:

(1) Total hours worked (excluding overtime) by a partially separated individual in adversely affected employment in the 52 weeks (excluding weeks in such period during which the individual was sick or on vacation) preceding the individual's first qualifying separation, by

(2) The number of weeks in such 52 weeks (excluding weeks in such period during which the individual was sick or on vacation) in which the individual actually worked in such employment.

(f) *Average weekly wage* means one-thirteenth of the total wages paid to an individual in the individual's high quarter. The high quarter for an individual is the quarter in which the total wages paid to the individual were highest among the first four of the last five completed calendar quarters preceding the individual's appropriate week.

(g) *Average weekly wage in adversely affected employment* means a figure obtained by dividing:

(1) Total wages earned by a partially separated individual in adversely affected employment in the 52 weeks (excluding the weeks in that period the individual was sick or on vacation) preceding the individual's first qualifying separation, by

(2) The number of weeks in such 52 weeks (excluding the weeks in that period the individual was sick or on vacation) the individual actually worked in such employment.

(h) *Benefit period* means, with respect to an individual:

(1) The benefit year and any ensuing period, as determined under the applicable State law, during which the individual is eligible for regular compensation, additional compensation, extended compensation, or federal supplemental compensation, as these terms are defined by paragraph (oo) of this section; or

(2) The equivalent to such a benefit year or ensuing period provided for under the Federal unemployment insurance law.

(i) *Bona fide application for training* means an individual's signed and dated application for training filed with the State agency administering the TAA training program, on a form necessarily containing the individual's name, petition number, local office number, and specific occupational training. This form shall be signed and dated by a State agency representative upon receipt.

(j)(1) *Certification* means a certification of eligibility to apply for TAA issued under section 223 of the Act with respect to a specified group of workers of a firm or appropriate subdivision of a firm.

(2) *Certification period* means the period of time during which total and partial separations from adversely affected employment within a firm or appropriate subdivision of a firm are covered by the certification.

(k) *Commuting area* means the area in which an individual would be expected to travel to and from work on a daily basis as determined under the applicable State law.

(l) *Date of separation* means:

(1) With respect to a total separation—

(i) For an individual in employment status, the last day worked; and

(ii) For an individual on employer-authorized leave, the last day the individual would have worked had the individual been working; and

(2) With respect to a partial separation, the last day of the week in which the partial separation occurred.

(m) *Eligibility period* means the period of consecutive calendar weeks during which basic or additional TRA is payable to an otherwise eligible individual, and for an individual such eligibility period is—

(1) *Basic TRA*. (i) With respect to a first qualifying separation (as defined in paragraph (t)(3)(i)(A) of this section) that occurs on a day that precedes August 23, 1988, the 104-week period beginning with the first week following the week with respect to which the individual first exhausts all rights to regular compensation (as defined in paragraph (oo)(1) of this section) in such individual's first benefit period (as described in § 617.11(a)(1)(iv)) or § 617.11(a)(2)(iv), whichever is applicable), and

(ii) With respect to a total qualifying separation (as defined in paragraph (t)(3)(i)(B) of this section) that occurs on or after August 23, 1988—or before August 23, 1988, if the individual also had a prior first qualifying separation under the same certification—the 104-week period beginning with the first week following the week in which such total qualifying separation occurred;

*Provided*, that, an individual who has a second or subsequent total qualifying separation within the certification period of the same certification shall be determined to have a new 104-week eligibility period based upon the most recent such total qualifying separation; but the rule of this proviso shall not be applicable in the case of an individual who had a total qualifying separation before August 23, 1988, and also had a prior first qualifying separation (as referred to in paragraph (m)(1)(i) of this section) within the certification period of the same certification, if the individual's 104-week eligibility period based upon the total qualifying separation (as referred to in paragraph (m)(1)(i) of this section) would end on a

date earlier than the ending date of the individual's eligibility period which is based upon the prior first qualifying separation; and

(2) *Additional TRA*. With respect to additional weeks of TRA, and any individual determined under this part 617 to be entitled to additional TRA, the consecutive calendar weeks that occur in the 26-week period that—

(i) Immediately follows the last week of entitlement to basic TRA otherwise payable to the individual, or

(ii) Begins with the first week of training approved under this part 617, if such training begins after the last week described in paragraph (m)(2)(i) of this section, or

(iii) Begins with the first week in which such training is approved under this part 617, if such training is so approved after the training has commenced; but approval of training under this part 617 after the training has commenced shall not imply or justify approval of a payment of basic or additional TRA with respect to any week which ended before the week in which such training was approved, nor approval of payment of any costs of training or any costs or expenses associated with such training (such as travel or subsistence) which were incurred prior to the date of the approval of such training under this part 617.

(n) *Employer* means any individual or type of organization, including the Federal government, a State government, a political subdivision, or an instrumentality of one or more governmental entities, with one or more individuals performing service in employment for it within the United States.

(o) *Employment* means any service performed for an employer by an officer of a corporation or an individual for wages.

(p) *Exhaustion of UI* means exhaustion of all rights to UI in a benefit period by reason of:

(1) Having received all UI to which an individual was entitled under the applicable State law or Federal unemployment compensation law with respect to such benefit period; or

(2) The expiration of such benefit period.

(q) *Family* means the following members of an individual's household whose

principal place of abode is with the individual in a home the individual maintains or would maintain but for unemployment:

(1) A spouse;

(2) An unmarried child, including a stepchild, adopted child, or foster child, under age 21 or of any age if incapable of self-support because of mental or physical incapacity; and

(3) Any other person whom the individual would be entitled to claim as a dependent for income tax purposes under the Internal Revenue Code of 1954.

(r) *First benefit period* means the benefit period established after the individual's first qualifying separation or in which such separation occurs.

(s) *First exhaustion of UI* means the first time in an individual's first benefit period that the individual exhausts all rights to UI; first exhaustion shall be deemed to be complete at the end of the week the exhaustion occurs.

(t)(1) *First separation* means, for an individual to qualify as an adversely affected worker for the purposes of TAA program benefits (without regard to whether the individual also qualifies for TRA), the individual's first total or partial separation within the certification period of a certification, irrespective of whether such first separation also is a qualifying separation as defined in paragraph (t)(2) of this section;

(2) *Qualifying separation* means, for an individual to qualify as an adversely affected worker and for basic TRA—

(i) Prior to August 23, 1988, the individual's first (total or partial) separation within the certification period of a certification, with respect to which the individual meets all of the requirements of §617.11(a)(1) (i) through (iv), and which qualifies as a first qualifying separation as defined in paragraph (t)(3)(i)(A) of this section, and

(ii) At any time before, on, or after August 23, 1988, any total separation of the individual within the certification period of a certification (other than a first qualifying separation as defined in paragraph (t)(3)(i)(A) of this section), with respect to which the individual meets all of the requirements in §617.11(a)(2) (i) through (iv), and which

qualifies as a total qualifying separation as defined in paragraph (B) of (t)(3)(i)(B) of this section;

(3) "First qualifying separation" means—

(i) For the purposes of determining an individual's eligibility period for basic TRA—

(A) With respect to a separation that occurs before August 23, 1988, the individual's first (total or partial) separation within the certification period of a certification, with respect to which the individual meets all of the requirements of §617.11(a)(1) (i) through (iv), and

(B) With respect to a separation that occurs before, on, or after August 23, 1988 (other than a first qualifying separation as defined in paragraph (t)(3)(i)(A) of this section), the first total separation of the individual within the certification period of a certification, with respect to which the individual meets all of the requirements in §617.11(a)(2) (i) through (iv); and

(ii) For the purposes of determining the weekly and maximum amounts of basic TRA payable to an individual, with respect to a separation that occurs before, on, or after August 23, 1988, the individual's first (total or partial) separation within the certification period of a certification if, with respect to such separation, the individual meets the requirements of §617.11(a)(1) (i), (ii) and (iv) or §617.11(a)(2) (i), (ii) and (iv).

(u) *Head of family* means an individual who maintains a home for a family. An individual maintains a home if over half the cost of maintenance is furnished by the individual or would be furnished but for unemployment.

(v) *Impact date* means the date stated in a certification issued under the Act on which total or partial separations began or threatened to begin in a firm or a subdivision of a firm.

(w) *Job search program* means a job search workshop or job finding club.

(x) *Job search workshop* means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects should include, but not be limited to, labor market information, resume writing, interviewing

techniques, and techniques for finding job openings.

(y) *Job finding club* means a job search workshop which includes a period of 1 to 2 weeks of structured, supervised activity in which participants attempt to obtain jobs.

(z) *Layoff* means a suspension of or separation from employment by a firm for lack of work, initiated by the employer, and expected to be for a definite or indefinite period of not less than seven consecutive days.

(aa) *Liabile State* and *Agent State* are defined as follows:

(1) *Liabile State* means, with respect to any individual, the State whose State law is the applicable State law as determined under §617.16 for all purposes of this Part 617.

(2) *Agent State* means, with respect to any individual, any State other than the State which is the liable State for such individual.

(bb) *On-the-job training* means training provided by an employer to an individual who is employed by the employer.

(cc) *Partial separation* means that during a week ending on or after the impact date specified in the certification under which an adversely affected worker is covered, the individual had:

(1) Hours of work reduced to 80 percent or less of the individual's average weekly hours in adversely affected employment; and

(2) Wages reduced to 80 percent or less of the individual's average weekly wage in such adversely affected employment.

(dd) *Regional Administrator* means the appropriate Regional Administrator of the Employment and Training Administration, United States Department of Labor (hereafter Department).

(ee) *Remuneration* means remuneration as defined in the applicable State law.

(ff) *Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

(gg) *Separate maintenance* means maintaining another (second) residence, in addition to the individual's regular place of residence, while attending a training facility outside the individual's commuting area.

(hh) *State* means the States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and the term "United States" when used in a geographical sense includes such Commonwealth.

(ii) *State agency* means the State Employment Security Agency; the employment service of the State; any State agency carrying out title III of the Job Training Partnership Act; or any other State or local agency administering job training or related programs with which the Secretary has an agreement to carry out any of the provisions of the Act.

(jj) *State law* means the unemployment compensation law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304).

(kk) *Suitable work* means, with respect to an individual:

(1) Suitable work as defined in the applicable State law for claimants for regular compensation (as defined in paragraph (oo)(1) of this section); or

(2) Suitable work as defined in applicable State law provisions consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970;

whichever is applicable, but does not in any case include self-employment or employment as an independent contractor.

(ll) *Total separation* means a layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(mm) *Trade adjustment assistance (TAA)* means the services and allowances provided for achieving reemployment of adversely affected workers, including TRA, training and other reemployment services, and job search allowances and relocation allowances.

(nn) *Trade readjustment allowance (TRA)* means a weekly allowance payable to an adversely affected worker with respect to such worker's unemployment under subpart B of this part 617.

(oo) *Unemployment insurance (UI)* means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter

85, title 5 of the United States Code, and the Railroad Unemployment Insurance Act. "UI" includes "regular compensation," "additional compensation," "extended compensation," and "federal supplemental compensation," defined as follows:

(1) *Regular compensation* means unemployment compensation payable to an individual under any State law, and, when so payable, includes unemployment compensation payable pursuant to chapter 85, title 5 of the United States Code, but does not include extended compensation, additional compensation, or federal supplemental compensation;

(2) *Additional compensation* means unemployment compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors and, when so payable, includes unemployment compensation payable pursuant to chapter 85, title 5 of the United States Code; and

(3) *Extended compensation* means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an Extended Benefit Period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 and regulations governing the payment of extended unemployment compensation, and, when so payable, includes unemployment compensation payable pursuant to chapter 85, title 5 of the United States Code, but does not include regular compensation, additional compensation, or federal supplemental compensation. Extended compensation is also referred to in this part 617 as Extended Benefits or EB.

(4) *Federal supplemental compensation* means the supplemental unemployment compensation payable to individuals who have exhausted their rights to regular and extended compensation, and which is payable under the Federal Supplemental Compensation Act of 1982 or any similar Federal law enacted before or after the 1982 Act.

(pp) *Wages* means all compensation for employment for an employer, including commissions, bonuses, and the

cash value of all compensation in a medium other than cash.

(qq) *Week* means a week as defined in the applicable State law.

(rr) *Week of unemployment* means a week of total, part total, or partial unemployment as determined under the applicable State law or Federal unemployment compensation law.

[51 FR 45848, Dec. 22, 1986, as amended at 53 FR 32348, Aug. 24, 1988; 59 FR 926, 927, Jan. 6, 1994; 61 FR 19983, May 3, 1996]

#### § 617.4 Benefit information to workers.

(a) *Providing information to workers.* State agencies shall provide full information to workers about the benefit allowances, training, and other employment services available under subparts B through E of this part 617 and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services.

(b) *Providing assistance to workers.* State agencies shall provide whatever assistance is necessary to enable groups of workers, including unorganized workers, to prepare petitions or applications for program benefits.

(c) *Providing information to State vocational education agencies and others.* State agencies shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 of the Act and of projections, if available, of the needs for training under section 236 of the Act as a result of such certification.

(d) *Written and newspaper notices.* (1) *Written notices to workers.* (i) Upon receipt of a certification issued by the Department of Labor, the State agency shall provide a written notice through the mail of the benefits available under subparts B through E of this part 617 to each worker covered by a certification issued under section 223 of the Act when the worker is partially or totally separated or as soon as possible after the certification is issued if such workers are already partially or totally separated from adversely affected employment.

(ii) The State agency will satisfy this requirement by obtaining from the

firm, or other reliable source, the names and addresses of all workers who were partially or totally separated from adversely affected employment before the certification was received by the agency, and workers who are thereafter partially or totally separated within the certification period. The State agency shall mail a written notice to each such worker of the benefits available under the TAA Program. The notice must include the following information:

(A) Worker group(s) covered by the certification, and the article(s) produced as specified in the copy of the certification furnished to the State agency.

(B) Name and the address or location of workers' firm.

(C) Impact, certification, and expiration dates in the certification document.

(D) Benefits and reemployment services available to eligible workers.

(E) Explanation of how workers apply for TAA benefits and services.

(F) Whom to call to get additional information on the certification.

(G) When and where the workers should come to apply for benefits and services.

(2) *Newspaper notices.* (i) Upon receipt of a copy of a certification issued by the Department affecting workers in a State, the State agency shall publish a notice of such certification in a newspaper of general circulation in areas in which such workers reside. Such a newspaper notice shall not be required to be published, however, in the case of a certification with respect to which the State agency can substantiate, and enters in its records evidence substantiating, that all workers covered by the certification have received written notice required by paragraph (d)(1) of this section.

(ii) A published notice must include the following kinds of information:

(A) Worker group(s) covered by the certification, and the article(s) produced as specified in the copy of the certification furnished to the State agency.

(B) Name and the address or location of workers' firm.