

DEPARTMENT OF LABOR**Employment and Training Administration****Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009**

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice, Training and Employment Guidance Letter (TEGL).

SUMMARY: The Employment and Training Administration of the U.S. Department of Labor is publishing, for public information, notice of the issuance and availability of Training and Employment Guidance Letter (TEGL) number 22-08 entitled, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009*, signed on May 15, 2009 by Douglas F. Small Deputy Assistant Secretary for Employment and Training.

FOR FURTHER INFORMATION CONTACT: Terry Clark, 202-693-3707.

SUPPLEMENTARY INFORMATION: The complete text of this guidance document is provided in this notice. In addition, it is available on the ETA Advisory Web site at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2756.

Subject: Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009 (TEGL 22-08).

Purpose: To assist the State Workforce Agencies designated by the Governor as "cooperating state agencies" in implementing the provisions of the Trade and Globalization Adjustment Assistance Act of 2009 that amend the Trade Adjustment Assistance program, and creates or expands programs for Workers, Firms, Communities, and Farmers.

References: The Trade and Globalization Adjustment Assistance Act of 2009 (Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, Public Law (Pub. L.) 111-5 (enacted on February 17, 2009); Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107-210); the Trade Act of 1974, as amended (Pub. L. 93-618, as amended); 20 CFR part 617; 29 CFR part 90; Training and Employment Guidance Letter (TEGL) No. 11-02 with Changes 1, 2, and 3; TEGL No. 2-03; Unemployment Insurance Program Letter (UIPL) No. 02-

03, and Change 1 and Change 3; UIPL No. 05-03; UIPL No. 33-03.

Definitions: For purposes of these operating instructions, the following definitions will apply:

1. *2002 Act* means the Trade Act of 1974, Public Law 93-618, as amended through the Trade Adjustment Assistance Reform Act of 2002, Public Law 107-210.

2. *2002 Amendments* means the amendments made to the Trade Act of 1974 by the Trade Adjustment Assistance Reform Act of 2002, Public Law 107-210.

3. *2009 Act* means the Trade Act as it stands in 2009, including the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) amendments.

4. *2009 Amendments* means the TGAAA, Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

5. *Trade Act of 1974*, means the Trade Act of 1974, Public Law 93-618, as amended (through Pub. L. 106-113).

6. *Recovery Act* means the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

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.

8. *CSA* means Cooperating State Agency.

9. *Department* or *DOL* means the U.S. Department of Labor.

10. *DOC* means U.S. Department of Commerce.

11. *Secretary* means the Secretary of Labor.

12. *TAA program* means the Trade Adjustment Assistance for Workers program.

13. *TRA* means Trade Readjustment Allowances.

14. *RTAA* means Reemployment Trade Adjustment Assistance, under Section 246 of the 2009 Act.

15. *HCTC* means Health Coverage Tax Credit. (Section 35, Internal Revenue Code (I.R.C.) of 1986) (26 U.S.C. 35)

16. *WIA* means the Workforce Investment Act of 1998, Public Law 105-220, as amended. (29 U.S.C. 2801 *et seq.*)

17. *Trade Affected Worker* means workers who are members of a certified worker group and have been separated or threatened with separation.

Background: The TAA program for workers was first established at the DOL by the Trade Act of 1974, and has been amended several times over the past

thirty-five years. The latest amendments are contained in the 2009 Act, which is part of the Recovery Act. The 2009 Act overhauls the TAA program and expands TAA coverage to more workers and firms, including workers and firms in the service sector, and improves workers' opportunities for training, health insurance coverage, and reemployment.

Section 1856 of the 2009 Amendments contains the sense of Congress as it applies the TAA programs: "the Secretaries of Labor, Commerce, and Agriculture should apply the provisions of [their respective trade adjustment assistance programs] with the utmost regard for the interests of workers, firms, communities, and farmers petitioning for benefits." These operating instructions reflect this intent. DOL expects the CSAs to implement these instructions in accordance with that intent.

Many aspects of the process for determining group and individual eligibility for TAA have been reformed by the 2009 Amendments. These amendments, as addressed in these operating instructions, apply to workers covered by petitions for adjustment assistance filed on or after May 18, 2009. Workers covered by petitions filed on or before May 17, 2009, are subject to the provisions of the 2002 Act as described in the Operating Instructions provided in TEGL No. 11-02 and its changes, and TEGL No. 2-03 and its changes. These provisions remain in full force and effect as participants who are certified under the 2002 Act continue to seek and receive services and benefits under those provisions. This is true for all workers separated from adversely affected employment before the expiration of a certification based on a petition filed on or before May 17, 2009.

Under the provisions of the 2002 Act, DOL receives petitions for TAA filed by an employer, a one-stop operator or one-stop partner (as defined in section 101 of the WIA), 29 U.S.C. 2801, a State dislocated worker unit established under title I of WIA, a group of workers, or their authorized representative. DOL conducts fact-finding investigations of these petitions to determine whether increased imports have contributed importantly to the workers' displacement, or if the workers have been affected by certain shifts in production. States make available rapid response and appropriate core and intensive services under WIA and assist DOL in reviewing the petitions. If the findings of an investigation show that the workers have been adversely affected by increased imports or a shift in production of articles, the Secretary

of Labor issues a certification of eligibility to apply for adjustment assistance. Once a certification is issued, notice of the certification, including the reason for certification, is transmitted to the State and the petitioner, published in the **Federal Register**, and posted on the DOL Web site.

Under an agreement executed by the Secretary of Labor and the State, the CSA acts as the agent of the Secretary to notify certified workers of potential TAA benefits and services, make eligibility determinations for individuals, and deliver benefits and services. Individual workers who are members of the certified worker group apply for benefits and services at a One-Stop Career Center or other local office of the CSA. Individual workers who meet the qualifying criteria may receive job training, income support in the form of TRA, job search allowances, HCTC, a wage supplement in the form of ATAA (now RTAA), and relocation allowances. In addition, all workers covered by a certification are eligible for reemployment services including job referrals, job clubs, and resume-writing assistance.

The 2009 Amendments amend the provisions of the 2002 Act in several substantial ways:

Group Eligibility Extended to Include

- Workers in firms that supply services;
- Workers whose firm has shifted production to *any* foreign country;
- Workers in public agencies;
- Workers whose firm produces component parts based on increased imports of finished products;
- Workers in firms that supply testing, packaging, maintenance and transportation services to companies with TAA-certified workers; and
- Workers whose firm is identified in an International Trade Commission "injury" determination listed in the Act.

Program Administration and Service Delivery

- Provides workers with a new entitlement to employment and case management services, and designates funds for that purpose;
- Permits CSAs to waive requirements as necessary to ensure the eligibility for program benefits of returning service members in the same manner and to the same extent as if the service member had not served a period of duty;
- Provides protections for workers covered under certifications delayed by judicial and administrative appeals;

- Applies State UI "good cause" waiver provisions to all TAA time limitations; and
- Provides minimum requirements for CSA reviews of waivers of the training requirement.

Training

- Raises the statutory cap on funds that may be allocated to the States for training from \$220 million to \$575 million per year, and amends how DOL apportion those funds;
- Allows TAA-funded training prior to separation from employment;
- Allows for part-time training, but without TRA; and
- Extends the deadline for enrolling in training in order to qualify for TRA to 26 weeks from the later of the worker's most recent total qualifying separation, or 26 weeks from the issuance of the certification. States may grant an extension of the training deadline for up to 45 days for extenuating circumstances. Workers may also receive a waiver of the training requirement within the same 26-week plus 45-day periods.

Income Support

- Increases the maximum amount of additional TRA from 52 to 78 weeks for workers in long-term training;
- Permits the payment of 78 weeks of additional TRA over a period of 91 weeks, thereby allowing breaks in training and temporary periods of employment where additional TRA is not paid;
- Allows payment of up to 26 more consecutive weeks of additional TRA if the worker must undertake prerequisite education or remedial education in order to complete a program of TAA training;
- Allows trade-affected workers to elect to receive TRA instead of Unemployment Insurance (UI) based upon a second UI benefit year resulting from part-time or short-term work with a lower weekly benefit amount (WBA);
- Creates a new standard for the waiver of recovery of TAA overpayments; and
- Eliminates the 210-day requirement for making an application for training as a condition for the receipt of additional TRA.

Wage Supplement (RTAA)

- Eliminates the requirement for a group certification specifically for RTAA;
- Eliminates the requirement under ATAA that a worker must find reemployment within 26 weeks of layoff;
- Workers who choose and are eligible to receive RTAA may also

receive regular TAA benefits and services: Employment and case management services, training, TRA (with limitations), relocation, HCTC, and job search allowances;

- Increases the limit on wages in eligible reemployment to \$55,000 a year;
- Increases the individual's benefit cap to \$12,000; and
- Allows a worker to qualify for RTAA when working part-time.

Health Coverage Tax Credit

- Expands the HCTC program, which is available to "eligible TAA recipients."
- Modifies the definition of an "eligible TAA recipient" to permit a worker to receive the HCTC even though s/he is in a break in training of a duration that renders the worker ineligible for TRA.
- Modifies the definition of an "eligible TAA recipient" to not apply the training enrollment requirements to an individual who is receiving unemployment insurance compensation.
- Increases the HCTC tax credit from 65 percent to 80 percent of the amount a worker paid for coverage under qualifying health insurance; and
- Provides for the continuation of HCTC eligibility for family members after receipt of Medicare, Death, or Divorce of the principle recipient.

Job Search and Relocation

- Amends the percentage of job search expenses that may be paid on behalf of a qualified participant to 100 percent of the total expenses, capped at \$1,500; and
- Amends the percentage of relocation expenses that may be paid on behalf of a qualified participant to 100 percent of the total expenses, plus a payment up to \$1,500.

Operating Instructions: The operating instructions contained in the attachment are issued to the States and the CSAs as guidance provided by DOL in its role as the principal in the TAA program. As agents of the Secretary of Labor, the States and CSAs may not vary from the operating instructions in this document without prior approval from DOL.

Pending the issuance of regulations implementing the provisions of the 2009 Act, the operating instructions in this document constitute the controlling guidance for the States and the CSAs in implementing and administering the 2009 Act, as provided in the agreements between the States and the Secretary of Labor under Section 239 of the 2009 Act.

These Operating Instructions only address changes to the TAA program

made by the 2009 Amendments. For issues that are not addressed by these operating instructions, States must continue to comply with Training and Employment Guidance Letter (TEGL) 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 2-03, Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002, and Change 1; and other such program letters issued by the Department applicable to the TAA benefits and assistance for adversely affected workers covered under TAA certifications resulting from petitions filed before May 18, 2009.

Unless otherwise noted, the 2009 Act takes effect for petitions filed on or after May 18, 2009, which is 90 days after the date the President signed the Recovery Act into law. This effective date includes amendments to the petitioning process and to the individual eligibility requirements and levels of TAA benefits and services. For convenience and emphasis, the effective date is repeated in several sections of these instructions. Petitions filed on and after May 18, 2009, and certifications issued under those petitions, will be identified by a numbering sequence starting at 70,001.

Action Required: CSAs are required to implement the 2009 amendments as set forth in these Operating Instructions for workers covered under petitions filed on or after May 18, 2009. Additionally, CSAs will continue to administer the 2002 Act for workers covered under petitions filed before the effective date of the 2009 Act until all of those workers have exited the program. CSAs will inform all appropriate staff of the contents of these instructions.

Inquiries: CSAs should direct all inquiries to the appropriate ETA Regional office.

Attachment A: Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009.

Attachment B: Trade Act of 1974, as amended, can be accessed at <http://wdr.doleta.gov/directives/attach/tegl/TEGL22-08aB.pdf>.

Attachment A

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Introduction

These Operating Instructions only address changes to the TAA program made by the 2009 Amendments. For issues that are not addressed by these operating instructions, States must continue to comply with Training and Employment Guidance Letter (TEGL) 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 2-03, Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002, and Change 1; and other such program letters issued by the Department applicable to the TAA benefits and assistance for adversely affected workers covered under TAA certifications resulting from petitions filed before May 18, 2009.

Definitions

For purposes of these operating instructions, the following definitions will apply:

- **2002 Act** means the Trade Act of 1974, Public Law 93-618, as amended through the Trade Adjustment Assistance Reform Act of 2002, Public Law 107-210.
- **2002 Amendments** means the amendments made to the Trade Act of 1974 by the Trade Adjustment Assistance Reform Act of 2002, Public Law 107-210.
- **2009 Act** means the Trade Act as it stands in 2009, including the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) amendments.
- **2009 Amendments** means the TGAAA, Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- **Trade Act of 1974**, means the Trade Act of 1974, Public Law 93-618, as amended (through Pub. L. 106-113).
- **Recovery Act** means the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- **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.

- **CSA** means Cooperating State Agency.
- **Department** or **DOL** means the U.S. Department of Labor.
- **DOC** means U.S. Department of Commerce.
- **Secretary** means the Secretary of Labor.
- **TAA program** means the Trade Adjustment Assistance for Workers program.
- **TRA** means Trade Readjustment Allowances.
- **RTAA** means Reemployment Trade Adjustment Assistance, under Section 246 of the 2009 Act.
- **HCTC** means Health Coverage Tax Credit. (Section 35, Internal Revenue Code (I.R.C.) of 1986) (26 U.S.C. 35).
- **WIA** means the Workforce Investment Act of 1998, Public Law 105-220, as amended. (29 U.S.C. 2801 *et seq.*).
- **Trade Affected Worker** means workers who are members of a certified worker group and have been separated or threatened with separation.

A. Reauthorization and Termination

Statutory Change: Sections 1891 through 1893 of the 2009 Amendments contain effective dates for the 2009 Act and amend section 245, 246 and 285 relating to the authorization of appropriations and termination/phase-out provisions applicable to the TAA program under the 2002 Act and the TAA program under the 2009 Act.

Administration: Section 1891 of the 2009 Amendments provides that the effective date for the 2009 Act is 90 days after the date of enactment and the amendments apply to petitions filed on or after the effective date. Since the 2009 Amendments were signed into law on February 17, 2009, the effective date is May 18, 2009. Therefore, petitions filed on or after that date will be governed by the 2009 Act and the 2009 Act will apply to benefits available to workers covered under certifications issued in response to such petitions. Workers covered by certifications issued in response to petitions filed before May 18, 2009 will continue to be governed by the provisions of the 2002 Act. This distinction means that CSAs will be providing benefits under two different sets of rules for workers covered by petitions filed before and on or after May 18, 2009. Workers covered by petitions filed before May 18, 2009, will be entitled to the benefits and services available under the TAA program under the 2002 Act, including the opportunity for ATAA-certified workers to elect to

participate in the ATAA program and receive the ATAA wage supplement benefit. Workers covered by petitions filed on or after May 18, 2009, will be entitled to benefits and services under the new TAA program under the 2009 Act, including the RTAA wage supplement benefit. The ATAA program will not terminate, as provided in the 2002 Act, five years after it was implemented by a State. Instead, workers covered by certifications for TAA and ATAA based on petitions filed before May 18, 2009, will continue to be eligible to receive the ATAA wage supplement benefit available under the 2002 Act.

Section 1892 amends section 245 of the 2002 Act to extend the authorization of appropriations through December 31, 2010. This section also amends section 285 of the 2002 Act to extend the termination/phase-out provision to December 31, 2010. Under the termination phase-out provision, no petitions filed after December 31, 2010, will be certified. Workers covered by certifications based on petitions filed on or before December 31, 2010, will be eligible to continue to receive services and benefits in accordance with the requirements in effect before the termination.

Section 1893 contains other sunset provisions relating to the 2009 Amendments. DOL does not believe this section needs to be addressed in these operating instructions but will issue additional instructions if actions relating to these provisions were to become necessary.

The following operating instructions explain how the 2009 Amendments changed the 2002 Act, and provide guidance on the operation of the new TAA program.

B. Group Eligibility Requirements

B.1. Primary Worker Certification Criteria

Statutory Change: Section 1801 of the 2009 Amendments amends Section 222(a) of the 2002 Act to read:

(a) IN GENERAL. A group of workers shall be certified by the Secretary as eligible to apply for adjustment assistance under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) The sales or production, or both, of such firm have decreased absolutely;

(ii)(I) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) Imports of articles like or directly competitive with articles—

(aa) Into which one or more component parts produced by such firm are directly incorporated, or

(bb) Which are produced directly using services supplied by such firm, have increased; or

(III) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) The increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)(i)(I) There has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) Such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) The shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Administration: As explained in greater detail below, the 2009 Amendments substantially expand program coverage by expanding the groups of worker that the Department must certify. The 2009 Amendments expand the coverage of workers for firms that produce articles. Under the 2002 Act, the Department could not certify workers for firms that produce a component part for a domestic article, where imports of articles like or directly competitive with that domestic article caused the separations of workers producing that component part. The 2009 Act now provides, in these circumstances, for certification of the workers making the component part. It also provides for certification where separations are caused by increased imports of articles directly incorporating one or more component parts produced outside the United States are like or directly competitive with imports of articles incorporating one or more component parts produced by the workers' firm.

Significantly, the 2009 Amendments amend Section 222(a) of the 2002 Act to expand coverage to workers for firms that supply services on the same terms as workers for firms that produce articles. In addition, the 2002 Act covered workers only where production was shifted to certain foreign countries, unless there "has been or is likely to be

an increase in imports like or directly competitive with articles produced by" the workers' firm. The 2009 Act covers workers where there was a shift in production or the supply of services to any foreign country, regardless of whether there is either an actual or likely increase in imports.

The 2009 Act also codifies current practice of covering workers in a firm that acquires articles from a foreign country that are like or directly competitive with articles that are produced by those workers' firm. Similarly, the 2009 Act extends this practice to cover workers in a firm that acquires services from a foreign country that are like or directly competitive with services that are supplied by those workers' firm.

In order for the Department to issue a certification, the petition must satisfy these three criteria:

1. A significant number or proportion of the workers in the workers' firm, must have become totally or partially separated or be threatened with total or partial separation.

The first criterion has not changed from the first worker group eligibility criterion applied to the TAA program since its inception. However, the 2009 Amendments amend the definition of a "firm" to include an "appropriate subdivision," since those Amendments delete the latter term from the certification criteria. Accordingly, the term "firm," as used in these operating instructions, includes the "appropriate subdivision."

2. The second criterion is satisfied if either (2)(A)(i) or (2)(B)(i) is satisfied:

(i) Sales or production, or both, at the workers' firm must have decreased absolutely, and

(ii)(a) Imports of articles or services like or directly competitive with articles or services produced or supplied by the workers' firm have increased, or

(b) Imports of articles like or directly competitive with articles into which the component part produced by the workers' firm was directly incorporated have increased; or

(c) Imports of articles like or directly competitive with articles which are produced directly using the services supplied by the workers' firm have increased; or

(d) Imports of articles directly incorporating component parts not produced in the U.S. that are like or directly competitive with the article into which the component part produced by the workers' firm was directly incorporated have increased.

The first part of this requirement has not changed from the worker group

eligibility criterion applied to the TAA program since its inception.

The second part of this requirement significantly expands the TAA program's coverage to include certification based on increased imports of services as well as increased imports of articles. It also expands coverage based on increased imports to include imports of articles that either incorporate component articles produced by the workers' firm or are produced directly using services supplied by the workers' firm. In addition, clause (ii) expands coverage by allowing certification in situations where there has been an increase in imports from articles incorporating component parts produced in the United States to articles incorporating component parts produced outside the United States.

(B)(i)(I) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm; or

(ii) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm.

The first part of this requirement now includes workers for firms that supply services, thus significantly expanding coverage to include shifts in the supply of services by the workers' firm. It also now includes shifts of the production of articles or the supply of services to any foreign country by the workers' firm. The second part of this requirement (subclause ii) is new and provides for worker group eligibility based on foreign contracting by the workers' firm. Subclause (ii) is met if the workers' firm has acquired from a foreign source articles or services like or directly competitive with those produced/supplied by the workers' firm.

3. The increase in imports or shift/acquisition must have contributed importantly to the workers' separation or threat of separation.

The legislation codifies the Department's practice of interpreting the 2002 Act to require a causal nexus between the shift of production to a foreign country and the workers' separations. Previously, the contributed importantly criterion was explicit only in increased imports cases and was implicit in shift cases. The 2009 Amendments now make the requirement explicit for cases involving a shift in production or a shift in acquisition of a service.

B.2. Public Agency Worker Certification Criteria

Statutory Change: Section 1801 of the 2009 Amendments adds a new provision at subsection (b) of Section 222 of the 2009 Act. Section 222(b) now reads:

(b) ADVERSELY AFFECTED WORKERS IN PUBLIC AGENCIES.—A group of workers in a public agency shall be certified by the Secretary as eligible to apply for adjustment assistance under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services described in paragraph (2) contributed importantly to such workers' separation or threat of separation.

Administration: Workers of a public agency that has acquired from a foreign source services like or directly competitive with those supplied by the agency may now be certified as eligible to apply for TAA. Section 247(7) of the 2009 Act defines "public agency" as a "department or agency of a State or local government or of the Federal Government, or a subdivision thereof."

In order for a "public agency worker" certification to be issued, the petition must satisfy these three criteria:

1. A significant number or proportion of the workers in the public agency have become totally or partially separated or be threatened with total or partial separation.

2. The public agency has acquired from a foreign country services that are like or directly competitive with the services supplied by the public agency.

3. The acquisition of services described in criterion 2 contributed importantly to the workers' separation or threat of separation.

The new certification criteria treat similarly workers in firms in the private sector that perform services and workers in the public sector. The first criterion has been used for the certification of workers in firms that produce articles since the inception of the TAA program. The second criterion mirrors a certification criterion for workers in firms in the private sector. The third criterion similarly follows the certification criterion for workers in the private sector.

B.3. Secondarily-Affected Worker Certification Criteria

Statutory Change: Section 1801 of the 2009 Amendments rennumbers subsection (b) of Section 222 of the 2002 Act as subsection (c) and amends new Section 222(c) to read:

(c) ADVERSELY AFFECTED SECONDARY WORKERS.—A group of workers shall be certified by the Secretary as eligible to apply for trade adjustment assistance benefits under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under subsection (a), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection (d) (3) and (4)); and

(3) Either

(A) The workers firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (I). Section 1801 of the 2009 Amendments amends Section 222 of the Act so that Section 222(d)(3)–(4) now reads:

(3) DOWNSTREAM PRODUCER.—

(A) IN GENERAL.—The term 'downstream producer' means a firm that performs additional, value-added production processes or services directly for another firm for articles or services with respect to which a group of workers in such other firm has been certified under subsection (a).

(B) VALUE-ADDED PRODUCTION PROCESSES OR SERVICES.—For purposes of subparagraph (A), value-added production processes or services include final assembly, finishing, testing, packaging, or maintenance or transportation services.

(4) SUPPLIER.—The term "supplier" means a firm that produces and supplies directly to another firm component parts for articles, or services, used in the production of articles or in the supply of services, as the case may be, that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm.

Administration: The 2002 Act covers workers of a firm that supplies component parts (a "supplier") a primary firm (a firm that employs a worker group certified as eligible to apply for TAA) and workers of a firm that provides additional, value-added production processes (a "downstream producer") for a primary firm.

The 2009 Act now covers suppliers and downstream producers where the

certification of workers for the primary firm was based upon the firm's supply of services. Further, workers for suppliers and downstream producers may now be certified on the basis of the services they supply to, or the additional, value-added services they provide for, the primary firm. However, the requirement under the 2002 Act that the supplier must directly supply the primary firm has not changed. The component parts from the supplier must be used in the production of articles or in the supply of services that were the basis for the certification of a group of workers in the primary firm. Further, the component parts or services that the supplier supplied to the primary firm must either account for at least 20 percent of the production or sales of the supplier, or the loss of business with the primary firm by the upstream firm must have contributed importantly to the upstream workers' separations or threat of separations.

The "direct" requirement under the 2002 Act for downstream producers also remains unchanged: The downstream producer must perform additional, value-added production processes or services "directly" for a primary firm for articles or services with respect to which the group of workers in the primary firm was certified. However, the 2009 Amendments have eliminated the requirement that downstream workers may only be certified as secondarily affected if the workers of the primary firm are certified based on increased imports from Canada or Mexico or a shift of production to Canada or Mexico.

In order for a certification to be issued, the petition must satisfy these three criteria:

1. A significant number or proportion of the workers in the workers' firm must have become totally or partially separated or be threatened with total or partial separation.

2. The workers' firm (or subdivision) is a supplier or downstream producer to a primary firm and such supply or production is related to the article or service that was the basis for the primary firm's workers' certification.

3. Either A or B below is satisfied:

(A) The workers' firm is a supplier and the component parts it supplied to the primary firm (or subdivision) accounted for at least 20 percent of the production or sales of the workers' firm, or

(B) A loss of business by the workers' firm with the primary firm (or subdivision) contributed importantly to the workers' separation or threat of separation."

The new certification criteria permit a group of workers in a downstream producer to be eligible for TAA if the primary firm's certification is linked to trade with any country, not just Canada or Mexico. The first criterion has not changed from the worker group eligibility criteria applied to the TAA program since its inception. The second criterion reflects the elimination of the requirement in the 2002 Act that the certification of eligibility of the downstream producer's customer must be based on increased imports or a shift in production to Canada or Mexico. The third criterion is similar to the language in the 2002 Act, but also allows for secondary worker coverage based on certifications of workers in service sector firms. In all cases, there must have been a loss of sales to the certified firm.

B.4. Verification of Information

Statutory Change: Section 1801(b) of the 2009 Amendments adds a new subsection (e) to Section 222 of the 2009 Act, as follows:

(e)(3) VERIFICATION OF INFORMATION.—

(A) CERTIFICATION.—The Secretary shall require a firm or customer to certify—

(i) All information obtained under paragraph (1) from the firm or the customer (as the case may be) through questionnaires; and

(ii) All other information obtained under paragraph (1) from the firm or the customer (as the case may be) on which the Secretary relies in certifying a group of workers under section 223, unless the Secretary has a reasonable basis for determining that such information is accurate and complete without being certified.

(B) USE OF SUBPOENAS.—The Secretary shall require a workers' firm or a customer of the workers' firm to provide information requested by the Secretary under paragraph (1) by subpoena pursuant to section 249 if the firm or customer (as the case may be) fails to provide the information within 20 days of the Secretary's request, unless the firm or customer (as the case may be) demonstrates to the satisfaction of the Secretary that the firm or customer (as the case may be) will provide the information within a reasonable period of time.

(C) PROTECTION OF CONFIDENTIAL INFORMATION.—The Secretary may not release information obtained under paragraph (1) that the Secretary considers to be confidential business information unless the firm or customer (as the case may be) submitting the confidential business information had notice at the time of submission, that the information would be released by the Secretary, or the firm or customer (as the case may be) subsequently consents to the release of the information. Nothing in this paragraph shall be construed to prohibit the Secretary from providing such confidential business information to a court

in camera or to another party under a protective order issued by a court.

Administration: The 2009 Amendments do not change the Department's obligation to make a determination on the petitioning workers' eligibility to apply for TAA based on substantive evidence, its authority to subpoena information necessary to make a determination on a petition, or its obligation to protect confidential information.

The 2009 Act requires a firm or customer to verify the information it provides to the Department during the investigation of a TAA petition. Under the new program, the Department will require the firm or customer providing information through questionnaires or in other formats to certify that the information is accurate and complete, unless the Department has a reasonable basis for determining that such certification is not required. The various forms and communications used by the Department in collecting relevant information may include such an affirmation requirement.

The 2009 Act codifies the Department's practice of issuing subpoenas when the Department is unable, through other means, to obtain information necessary for making a determination. Under current practice, the issuance of the subpoena does not follow any established timeframe. Under the 2009 Act, the Department is required to issue a subpoena if the firm or customer fails to provide the information within twenty (20) days of the Department's request, unless the firm or customer has demonstrated to the Department's satisfaction that the information sought will be provided within a reasonable period of time.

The 20 day period begins once the Department issues an information request, not at the 20th day of the investigation. Thus, for example, if a petition is filed on June 5 and if a Confidential Data Request is issued on June 11, 2009, and the firm fails to provide the information, the Department may issue a subpoena on July 1, 2009.

Section 222(e)(3)(C) of the 2009 Act contains slightly different confidentiality protections on confidential information than those applied under the 2002 Act. The 2009 Act expressly prohibits DOL from releasing information it gathers in the course of the investigation of a petition where DOL considers that information to be "confidential business information." DOL currently defines that term in 29 CFR 90.33.

The 2009 Act provides two exceptions to this confidentiality requirement, the

first occurs where “the firm or customer * * * submitting the confidential business information had notice, at the time of submission, that the information would be released by” DOL. If DOL determines that a firm or customer submitted any information in confidence that is not entitled to confidentiality, then DOL, consistent with past practice, will notify the firm or customer of this finding and permit it to withdraw the information.

The 2009 Act’s second exception to confidentiality is the permission it affords DOL to provide “confidential business information to a court in camera or to another party under a protective order issued by a court.” This codifies past practice where DOL submits confidential business information under seal to the U.S. Court of International Trade on appeal of DOL’s denial of certification of a petition. It also codifies DOL’s practice of releasing, under a protective order issued by a court, confidential business information to plaintiffs’ attorneys in these proceedings.

In addition to the 2009 Act exceptions, DOL will release confidential business information with the permission of the entity submitting it, which is consistent with the intent of the 2009 Amendments. DOL is committed to protecting business confidential information to the full extent of the law.

B.5. Firms Identified by the International Trade Commission

Statutory Change: Section 1802 of the 2009 Amendments amends Section 222 of the 2002 Act by adding a new subsection (f):

(f) FIRMS IDENTIFIED BY THE INTERNATIONAL TRADE COMMISSION.—Notwithstanding any other provision of this chapter, a group of workers covered by a petition filed under section 221 shall be certified under subsection (a) as eligible to apply for adjustment assistance under this chapter if—

(1) The workers’ firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade

Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers’ firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b), the 1-year period preceding the 1-year period described in paragraph (2).

Administration: The 2009 Act provides, for the first time, for certification of a petition without a Departmental investigation upon certain findings by the International Trade Commission (ITC).

In order for a certification to be issued, the petition must satisfy these three criteria:

1. The workers’ firm must be publicly identified by name by the ITC as a member of a domestic industry in an investigation resulting in a finding of injury or market disruption under section 202(b)(1), 421(b)(1), 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930.

2. The petition is filed within one year after the date on which a summary of the ITC’s report to the President, or the ITC’s affirmative finding, is published in the **Federal Register**.

3. The workers of the firm identified in criterion 1 were totally or partially separated no more than one year before the publication date of the **Federal Register** notice described in criterion 2 and no later than one year after that date.

Should the petition be filed more than one year after the date of the publication of the ITC’s **Federal Register** notice, the Department will investigate whether the petition meets the other certification criteria. Further, although section 223(b) provides that a certification will not cover workers separated more than one year before the date of the petition on which that certification was granted, section 222(f)(3)(B) provides that a certification based upon an ITC finding covers workers separated up to a year before the date of the publication of the ITC’s **Federal Register** notice.

C. Trade Readjustment Allowances (TRA)

C.1. TRA Eligibility

Statutory Change: Sections 1801, 1821 and 1858 of the 2009 Amendments amend Section 231(a)(1)–(4) of the 2002 Act to read:

(a) Payment of a trade readjustment allowance shall be made to an adversely

affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins on or after the date of such certification, if the following conditions are met:

(1) Such worker’s total or partial separation before the worker’s application under this chapter occurred—

(A) On or after the date, as specified in the certification under which the worker is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) Before the expiration of the 2-year period beginning on the date on which the determination under section 223 was made, and

(C) Before the termination date (if any) determined pursuant to section 223(d).

(2) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment with a single firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purpose of this paragraph, any week in which such worker—

(A) Is on the employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(B) Does not work because of a disability that is compensable under a workmen’s compensation law or plan of a State or the United States,

(C) Had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm, or

(D) Is on call-up for purposes of active duty in a reserve status in the Armed Forces of the United States, provided such active duty is “Federal service” as defined in section 8521(a)(1) of title 5, United States Code shall be treated as a week of employment at wages of \$30 or more, but not more than 7 weeks, in case of weeks described in subparagraph (A) or (C), or both (and not more than 26 weeks, in the case of weeks described in subparagraph (B) or (D)), may be treated as weeks of employment under this sentence.

(3) Such worker—

(A) Was entitled to (or would be entitled to if the worker applied therefore) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) Has exhausted all rights to any unemployment insurance except additional compensation that is funded by a State and is not reimbursed from any Federal funds, to which the worker was entitled (or would be entitled if he applied therefore); and

(C) Does not have an unexpired waiting period applicable to the worker for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under

the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

Administration: Section 1821 of the 2009 Amendments changes Section 231(a) of the 2002 Act by eliminating the 60-day waiting period after a petition is filed to receive trade readjustment allowances (TRA) and allows receipt of those allowances for any week of unemployment that begins on or after the date of certification. This amendment allows workers to begin receiving TRA benefits immediately upon certification of a petition if UI entitlement (as defined in section 247(12)) has been exhausted. Unlike under the 2002 Act, this means that no payments may be made retroactively for weeks of unemployment that occur before the certification was issued, but after the date of the petition. Subparagraph C.5 of these Operating Instructions discusses two new provisions that address specific issues that may arise because of this amendment in determining the first payable week, such as the certification being delayed because of appeals or other situations where there is justifiable cause to extend the eligibility period for basic TRA.

Section 231(a)(1) through Section 231(a)(4), establishing requirements for TRA eligibility, have not otherwise been substantively amended. They continue to require for eligibility that the worker be adversely affected; that the worker's total or partial separation occurred during the period covered by the certification; that the worker (with exceptions) had 26 weeks of employment at \$30 or more per week in the 52-week period ending with the total or partial separation from adversely affected employment; that the worker was entitled to and exhausted all UI entitlement, except additional compensation that is funded by a State and is not reimbursed from any Federal funds; and that the worker would not be disqualified for extended compensation payable under the Federal-State Extended Compensation Act of 1970 by reason of its work search and job search requirements. Subparagraph C.4.1 of these Operating Instructions discusses the sole exception to the requirement that TRA eligibility depends upon the exhaustion all UI other than a certain type of additional compensation).

C.2. Enrollment in Training

Statutory Change: Section 1821 of the 2009 Amendments amends Section 231(a)(5)(A) of the 2002 Act to read:

(5) Such worker—

(A)(i) Is enrolled in a training program approved by the Secretary under section 236(a), and

(ii) The enrollment required under clause (i) occurs no later than the latest of—

(I) In the case of a worker whose most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2) occurs after the date on which the Secretary issues a certification covering the worker, the last day of the 26th week after such total separation,

(II) In the case of a worker whose most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2) occurs before the date on which the Secretary issues a certification covering the worker, the last day of the 26th week after the date of such certification,

(III) 45 days after the date specified in subclause (I) or (II), as the case may be, if the Secretary determines there are extenuating circumstances that justify an extension in the enrollment period,

(IV) In the case of a worker who fails to enroll by the date required by subclause (I), (II), or (III), as the case may be, due to the failure to provide the worker with timely information regarding the date specified in such subclause, the last day of a period determined by the Secretary, or

(V) The last day of a period determined by the Secretary to be approved for enrollment after the termination of a waiver issued pursuant to subsection (c),

(B) Has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

(C) Has received a written statement certified under subsection (c)(1) after the date described in subparagraph (13).

Administration: The 2009 Amendments leave intact the basic structure of Section 231(a)(5). As before, Section 231(a)(5)(A) requires, as a condition for receiving TRA, that the worker be enrolled in training. As before, Section 231(a)(5)(C) allows a worker to receive a waiver of the training requirement in order to receive basic TRA. Section 231(a)(5)(A)(ii) sets deadlines by which the enrollment in training must occur. These deadlines apply for eligibility for any TRA payment—basic TRA, additional TRA, and additional weeks paid to adversely affected workers who undertake remedial or prerequisite education.

The 2009 Amendments lengthen the enrollment deadlines from 8 weeks after certification or 16 weeks after separation to the later of 26 weeks from the separation or certification date. This deadline extension allows a worker to actively engage in a longer job search before making a decision about training, and to make full use of the case management services provided under

the 2009 Act to choose an appropriate training program. Additionally, in cases where large worker groups are dislocated all at once, it allows the CSA more time for counseling, assessment and other case management services which were difficult to perform in advance of the prior, shorter enrollment deadlines.

The 2009 Act continues to allow for an extension of the enrollment deadlines for 45 days where the CSA determines that there are extenuating circumstances justifying the extension. "Extenuating circumstances" continue to be circumstances beyond the control of the worker. This includes situations where training programs are abruptly cancelled as well as where the worker suffers injury or illness preventing participation in training.

The 2009 Act includes a new Section 231(a)(5)(A)(ii)(IV), providing an exception to the enrollment deadlines where the worker did not enroll by the deadlines because the CSA failed to provide the worker with timely information regarding the training enrollment deadlines. In that event, the worker must be enrolled by the last day of a period to be determined by the Secretary. Accordingly, the Secretary has determined that the worker must be enrolled in training or receive a waiver by the Monday of the first week occurring 60 days after the date on which the worker was properly notified of both his/her eligibility to apply for TAA and the requirement to enroll in training absent a waiver of the training requirement. The CSA must document its efforts to notify workers of the enrollment deadlines.

A worker must be enrolled in training as a condition of basic TRA when the enrollment in training deadline is reached. Further, a CSA may not waive the enrollment in training requirement after the deadlines have passed.

The 2009 Act continues to have an additional deadline for training enrollment that applies to workers who were granted a waiver of the training requirement, now in Section 231(a)(5)(A)(ii)(V). Workers who have received a training waiver must be enrolled in training prior to the last day of a period set by the Secretary after the termination of a waiver in order to maintain future eligibility for TRA. In its initial implementation of the 2002 Amendments, the Department set this time period to be the first Monday after the termination of the waiver. Subsequent experience operating the program has indicated that additional time is needed in some cases. Accordingly, the Secretary has determined that the worker must be

enrolled in training by the Monday of the first week occurring 30 days after the date on which the waiver terminated, whether by revocation or expiration.

“Enrolled in training” continues to mean that the worker’s application for training has been approved by the CSA and that the training institution has furnished written notice to the CSA that the worker has been accepted into the approved program which is to begin within 30 days of such approval.

C.3. Waiver of Training Requirement

Statutory Change: Section 1821 of the 2009 Amendments amends Section 231(c) of the 2002 Act 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) RECALL.—The worker has been notified that the worker will be recalled by the firm from which the separation occurred.

(B) 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.

(C) 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.

(D) 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.

(E) 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.

(F) 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 training that is suitable for the worker is available at a reasonable cost, or no training funds are available.

(2) DURATION OF WAIVERS.—

(A) IN GENERAL.—Except as provided in paragraph (3)(B), a waiver issued under paragraph (1) shall be effective for not more than 6 months after the date on which the waiver is issued, unless the Secretary determines otherwise.

(B) REVOCATION.—The Secretary shall revoke a waiver issued under paragraph (1) if the Secretary determines that the basis of a waiver is no longer applicable to the worker and shall notify, in writing, the worker of the revocation.

(3) AGREEMENTS UNDER SECTION 239.—

(A) ISSUANCE BY COOPERATING STATES.—An agreement under section 239 shall authorize a cooperating State to issue waivers as described in paragraph (1).

(B) Review of Waivers.—An agreement under section 239 shall require a cooperating State to review each waiver issued by the State under subparagraph (A), (B), (D), (E), or (F) of paragraph (1)—

(i) 3 months after the date on which the State issues the waiver; and

(ii) On a monthly basis thereafter.

(C) SUBMISSION OF STATEMENTS.—An agreement under section 239 shall include a requirement that the cooperating State submit to the Secretary the written statements provided under paragraph (1) and a statement of the reasons for the waiver.

Administration: The 2009 Amendments expand the definition of “Marketable Skills.” Additionally, they provide that no review of waivers is necessary if issued under the “retirement” reason for granting the waiver. Finally, they provide that periodic reviews of waivers issued under the remaining provisions need not occur during the first three months, but must be reviewed at the three-month mark and on a monthly basis thereafter.

Section 231(c) sets forth the requirements for issuing waivers of the requirement under Section 231(a)(5)(A) that a worker be enrolled in training in order to receive basic TRA, if training is not feasible or appropriate for the worker. The training enrollment requirement may only be waived for receipt of basic TRA. Training may not be waived for receipt of additional TRA or additional weeks paid to workers who participated in remedial or prerequisite education. In order to receive additional TRA, a worker must be participating in approved training.

Section 231(c)(1) continues to provide six specific criteria for issuing a waiver

of the training requirement for eligibility for basic TRA. For convenience, those criteria are provided below:

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

(B) 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.

(C) 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.

(D) 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.

(E) 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.

(F) 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.

The training requirement may be waived only after an assessment that results in a determination that one of the waiver provisions is met.

These criteria and their administration are essentially unchanged. The only change to these criteria is the addition of subparagraph (B)(ii) that specifies that workers who possess a post-graduate degree should be considered to have marketable skills and are eligible for the marketable skills waiver.

The requirement that waivers be reviewed within three months of the time they are issued provides the CSA with some flexibility in managing the waiver review process while at the same time allowing the State to ensure the worker continues to qualify for the waiver. It is important that the individual continue to receive appropriate case management services during the waiver period to ensure that progress continues to be made toward meeting the individual's reemployment plan.

C.4. Weekly Amounts of TRA

Statutory Change: Section 1822 of the 2009 Amendments amends Section 232(a)(1)–(2) of the 2002 Act to read:

(a) Subject to subsections (b), (c), and (d), the trade readjustment allowance payable to an adversely affected worker for a week of unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the workers' first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B) reduced (but not below zero) by—

(1) Any training allowance deductible under subsection (c); and

(2) Income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law, except that in the case of an adversely affected worker who is participating in training under this chapter, such income shall not include earnings from work for such week that are equal to or less than the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B)).

Administration: Section 232(a) establishes the weekly amount of TRA a worker may receive. Section 232(a)(2) requires the deduction from that weekly amount all income that is deductible from UI under the disqualifying income provisions of State or Federal UI law. The 2009 Act provides, however, that for workers participating in approved

training, no deduction is made for earnings from work for a week up to an amount that is equal to the worker's most recent UI benefit amount (as determined under section 231(a)(3)(B)).

This provision will affect only the benefit computation for workers who are participating in full-time training other than on-the-job training (because receipt of TRA requires participation in full-time training, as discussed in Section D.3 of these operating instructions). State payment units will need to reprogram their TRA payment process to accommodate this change in the amount of deductible earnings disregarded. This provision does not affect any wage calculations to determine a future claim for UI; it simply disregards wages equal to or less than the weekly benefit amount (WBA) for calculating the weekly TRA payment.

C.4.1. Election of TRA or UI

Statutory Change: Section 1822 of the 2009 Amendments amends Section 232 of the 2002 Act by adding a new subsection (d), to read:

(d) ELECTION OF TRADE READJUSTMENT ALLOWANCE OR UNEMPLOYMENT INSURANCE.— Notwithstanding section 231(a)(3)(B), an adversely affected worker may elect to receive a trade readjustment allowance instead of unemployment insurance during any week with respect to which the worker—

(1) Is entitled to receive unemployment insurance as a result of the establishment by the worker of a new benefit year under State law, based in whole or in part upon part-time or short-term employment in which the worker engaged after the worker's most recent total separation from adversely affected employment; and

(2) Is otherwise entitled to a trade readjustment allowance.

Administration: Sometimes, a worker earns wages after the most recent separation from adversely affected employment, qualifying the worker for a subsequent benefit year of UI at a lower WBA than for the first benefit year. Section 231(a)(3) requires, as a condition of receiving TRA, that a worker "has exhausted all rights to any unemployment insurance," except a certain type of additional compensation. Therefore, the worker's TRA, based upon, the higher WBA of the first benefit year, must stop while the worker collects UI based upon the lower WBA of the second benefit year. This result sometimes forces a worker to quit training to return to work.

Section 232(d), added by the 2009 amendments, resolves this dilemma by allowing the worker, notwithstanding the UI exhaustion requirement of section 231(a)(3)(B), to elect to receive

TRA instead of UI for any week where the worker meets two conditions: The worker is entitled to receive UI as a result of a new benefit year based in whole or in part upon part-time or short-term employment in which the worker engaged after the worker's most recent total separation from adversely affected employment; and the worker is otherwise entitled to TRA.

The first condition requires some explanation. It permits a worker to elect TRA, instead of UI based upon a new benefit year, only where that new benefit year is "based in whole or in part upon part-time or short-term employment in which the worker engaged after the worker's most recent total separation from adversely affected employment. * * *" Thus, in determining whether the worker may elect to receive TRA instead of UI based upon the new benefit year, the CSA must determine whether the worker had any wages "after the worker's most recent total separation from adversely affected employment." (Emphasis added). If the CSA determines that the worker is entitled to a new benefit year based, in whole or part, upon those specified wages "after" the worker's "most total separation from adversely affected employment," the worker may (if otherwise eligible) elect TRA instead of UI based on that new benefit year.

The first point to note is that the Act uses the phrase "most recent total separation from adversely affected employment," not, as in sections 231(a)(5)(A)(ii)(I) and (II), the phrase "most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2)" of section 231(a). (Emphasis added.) (See, also, section 233(a)(2), establishing the eligibility period for basic TRA, which uses substantively identical language.) Those paragraphs (1) and (2) of section 231(a) require that a worker's separation occur during the period covered by the certification and that the worker had, with certain exceptions, in the 52-week period ending with the week in which the separation occurred, at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment. The Department interprets the election provision at section 232(d) as looking at wages earned after the "most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2)" of section 231(a).

This interpretation is advantageous to workers because it looks to a broader range of wages upon which the new benefit year may be based (in whole or in part) in order to allow the worker the

election. For example, a worker might, after having a separation meeting the requirements of paragraphs (1) and (2), have a second separation after the period covered by the certification. Were section 232(d) read literally, only the wages earned after that second separation (the “most recent separation”), rather than all wages earned after the first separation (the “most recent separation that meets the requirements of paragraphs (1) and (2)”), would “count” in determining whether the worker’s new benefit year fell within the section permitting an election. The wages earned after the second separation might have occurred too recently to be used in establishing the second benefit year, and, in that event, that second benefit year would not fall within section 232(d). The worker would be ineligible to elect TRA over UI based upon the new benefit year. Thus, the Department’s interpretation will allow workers to elect TRA over UI based upon a new benefit year in more situations.

The second point to note is that (in addition to the time period during which the wages must be earned) the new benefit year must be based in whole or in part upon “part-time or short-term employment.” In practice, a worker who establishes a UI claim with a WBA that is less than the TRA benefit amount would meet this test as the subsequent employment would not have been suitable long term employment.

Significantly, the statute is silent as to what becomes of the UI claim based upon the second benefit year, where the claimant elects to receive TRA instead. Thus, State law applies to this UI claim. For States where that means a claim establishes a benefit year, no subsequent claim may be established in a later quarter during that benefit year, and any available entitlement remains, consistent with State law, once TRA is exhausted. For States where claims may be withdrawn if no benefits are paid, the worker might subsequently file a claim in a later quarter, and the worker might potentially exercise the TRA option a second time.

Often, the weekly amount of the UI payments in the second benefit period will be a significant reduction from the weekly amount of TRA. If a worker establishes a new UI benefit year based in whole or in part upon part-time or short-term employment in which the worker engaged after the worker’s most recent total separation from adversely affected employment (meeting the conditions specified above), the State must provide the worker with the option to elect to continue to receive TRA, if the worker is otherwise eligible.

The CSA must provide the worker an explanation of his/her benefit rights in writing, and document the worker’s choice in the case management file.

C.5. Limitations on TRA

C.5.1 Prerequisite/Remedial TRA

Statutory Change: Sections 1823 and 1829 of the 2009 Amendments amend Section 233(a)(2) of the 2002 Act to read:

(2) A trade readjustment allowance under paragraph (1) shall not be paid for any week occurring after the close of the 104-week period (or, in the case of an adversely affected worker who requires a program of prerequisite education or remedial education (as described in section 236(a)(5)(D)) in order to complete training approved for the worker under section 236, the 130-week period) that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) Within the period which is described in section 231(a)(1), and

(B) With respect to which the worker meets the requirements of section 231(a)(2).

Administration: The 2009 Amendments added “prerequisite education” to “remedial education” as an exception to the 104-week eligibility period for basic TRA. Therefore, the eligibility period for basic TRA for workers requiring a program of either prerequisite education or remedial education is 130 weeks. Prerequisite education is coursework that the training institution requires for entry into the approved training program. For instance, some nursing programs may require additional math coursework that the worker may not have had in high school to begin training in the new field. When required, this additional coursework would qualify as “prerequisite education” and extend the weeks during which basic TRA is potentially payable under this provision.

C.5.2 Additional TRA

Statutory Change: Section 1823 of the 2009 Amendments amends Section 233(a)(3) of the 2002 Act to read:

(3) Notwithstanding paragraph (1), 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 78 additional weeks in the 91-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 91-week period

during which the individual is participating in such training.

Administration: Section 233(a)(3) allows workers participating in training to receive additional TRA. The 2009 Amendments increase the number of weeks for which a worker may receive additional TRA from 52 to 78. The eligibility requirements for additional TRA remain unchanged except for the elimination of the 210-day rule discussed in subparagraph C.5.3 below. This change provides support for workers to participate in longer term training, such as a two-year Associate’s degree, a nursing certification, or completion of a four year degree (if that four-year degree was previously initiated or if the worker will complete it using non-TAA funds).

The 2009 Act also expands the eligibility period within which a worker may receive additional TRA from 52 weeks to 91 weeks to accommodate breaks in training. The expansion of the eligibility period allows the worker 91 weeks during which to collect 78 weeks of benefits. Prior to this amendment, the worker had a 52-consecutive week period during which to collect 52 weeks of benefits. Any weeks not claimed were lost. This change allows the worker to not claim benefits during up to 13 weeks without losing any weeks of benefits.

C.5.3 Elimination of 210-Day Requirement

Statutory Change: Section 1821 of the 2009 Amendments repeal Section 233(b) of the 2002 Act, eliminating the 210-day time requirement for the submission of a bona fide application for training as a condition of additional TRA.

Administration: There is no longer a requirement that a worker make a bona fide application for training within the latter of 210 days of certification or separation. However, there are still deadlines for a worker to be enrolled in approved training as a condition for the receipt of TRA. See section C.2 of these operating instructions. Redesignated paragraphs 233(b)–(f) (covering adjustments in amounts of TRA, payments of TRA while in on-the-job training, breaks in training and extension of time for remedial education) remain the same as in the 2002 Act except that paragraph 233(f) adds prerequisite education, discussed in Section C.5.1, above.

C.6 Special Rules for Calculating Separations

C.6.1 Judicial or Administrative Appeal

Statutory Change: Section 1824 of the 2009 Amendments amends Section 233 of the 2002 Act by adding a new subsection (g), to read:

(g) SPECIAL RULE FOR CALCULATING SEPARATION.—Notwithstanding any other provision of this chapter, any period during which a judicial or administrative appeal is pending with respect to the denial by the Secretary of a petition under section 223 shall not be counted for purposes of calculating the period of separation under subsection (a)(2).

Administration: As discussed above, Section 233(a)(2) establishes a 104-week eligibility period (130 weeks for workers requiring prerequisite or remedial education) for basic TRA. This period begins with the first week following the week in which the worker was most recently totally separated from adversely affected employment within the period covered by the certification and with respect to which the worker meets certain tenure requirements in that employment.

This new section 233(g) tolls this eligibility period during a judicial or administrative appeal of the Department's denial of a certification. The tolling of deadlines is necessary; otherwise a successful appeal might be meaningless since all or most of the workers' eligibility period might lapse by the time the certification is granted.

In the event of a certification issued as a result of an appeal of a negative determination denying certification, the 104-week (130-week as applicable) eligibility period for basic TRA will begin with the week following the week in which the group was certified. There is no need to adjust the enrollment deadlines in such a circumstance because the applicable deadline will be 26 weeks after the certification is issued. Moreover, the enrollment deadlines may be extended due to extenuating circumstances or State good cause rules as with any other waivers.

C.6.2 Justifiable Cause To Extend the Period

Statutory Change: Section 1824 of the 2009 Amendments amends Section 233 of the 2002 Act by adding a new subsection (h), to read:

(h) SPECIAL RULE FOR JUSTIFIABLE CAUSE.—If the Secretary determines that there is justifiable cause, the Secretary may extend the period during which trade readjustment allowances are payable to an adversely affected worker under paragraphs (2) and (3) of subsection (a) (but not the

maximum amounts of such allowance that are payable under this section).

Administration: As discussed above, Section 233(a)(2) of the 2002 Act establishes a 104-week (130-week for workers requiring prerequisite or remedial education) period beginning with a worker's most recent total qualifying separation during which the worker may receive basic TRA. Section 233(a)(3) establishes a 91-week period during which a worker may receive additional TRA. Section 233(h) is a new section allowing for an extension of these periods for "justifiable cause," meaning circumstances determined to be beyond the worker's control by the CSA. In making this determination, the CSA will apply the State's "good cause" law, regulations, policies and practices applicable to administration of the State's UI laws.

C.6.3 Military Service

Statutory Change: Section 1824 of the 2009 Amendments amends Section 233 of the 2002 Act by adding a new subsection (i), to read:

(i) SPECIAL RULE WITH RESPECT TO MILITARY SERVICE—

(1) IN GENERAL.—Notwithstanding any other provision of this chapter, the Secretary may waive any requirement of this chapter that the Secretary determines is necessary to ensure that an adversely affected worker who is a member of a reserve component of the Armed Forces and serves a period of duty described in paragraph (2) is eligible to receive a trade readjustment allowance, training, and other benefits under this chapter in the same manner and to the same extent as if the worker had not served the period of duty.

(2) PERIOD OF DUTY DESCRIBED.—An adversely affected worker serves a period of duty described in this paragraph if, before completing training under section 236, the worker—

(A) Serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(B) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under section 502(f) of title 32, United States Code, for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

Administration: Under the 2002 Act, returning members of the Armed Forces and National Guard units could sometimes be determined to be ineligible for benefits if, for example, they missed the enrollment in training deadlines as a condition of TRA eligibility, or if the plant at which they worked closed while they were away on active duty. New section 233(i) makes

returning service members "whole," as if the period of military service had not occurred. The provision allows workers called up for active duty military or full-time National Guard service to restart the TAA enrollment process after completion of military service.

CSAs will need to apply this provision to any returning service member who either: (1) Served on active duty in the Armed Forces for a period of more than 30 days under a call or order to active duty of more than 30 days; or (2) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performed full-time National Guard duty under 32 U.S.C. 502(f) (regarding required drills and field exercises) for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds. Under section 233(i)(2), this "make-whole" provision applies only if the worker's period of duty occurs before the worker completes a training program approved under section 236. However, the worker need not have already enrolled in or in fact have begun training before the worker's period of duty began for this provision to apply. Upon separation, these individuals are eligible to receive TRA, training, and other benefits under this chapter in the same manner and to the same extent as if the worker had not served the period of duty.

Accordingly, the CSAs will toll all deadlines for all TAA, ATAA, and RTAA benefits and services, as well as TRA eligibility periods, during a service member's period of duty within the period described by section 233(i)(2), and which occurs before the worker completes TAA-approved training. A CSA must first consult with, and receive the Department's permission, before waiving any other TAA requirement under section 233(i).

C.7 Use of State Law Good Cause Provisions

Statutory Change: Section 1825 of the 2009 Amendments amends Section 234 of the 2002 Act by adding a new subsection (b):

(b) SPECIAL RULE WITH RESPECT TO STATE LAWS AND REGULATIONS ON GOOD CAUSE FOR WAIVER OF TIME LIMITS OR LATE FILING OF CLAIMS.—Any law, regulation, policy, or practice of a cooperating State that allows for a waiver for good cause of any time limitation relating to the administration of the State unemployment insurance law shall, in the administration of the program under this chapter by the State, apply to any time

limitation with respect to an application for a trade readjustment allowance or enrollment in training under this chapter.

Administration: New section 234(b) supersedes 20 CFR 617.50(d), providing in part that “no provision of State law or regulations on good cause for waiver of any time limit, or for late filing of any claim, shall apply to any time limitation referred to or specified in this part 617, unless such State law or regulation is made applicable by a specific provision of this part 617.” Accordingly, CSAs will apply state UI “good cause” waiver provisions (laws, policies, or practices) to all time limitations governing TRA and enrollment in training.

C.8 Waiver of Recovery of TRA Overpayment

Statutory Change: Section 1855 of the 2009 Amendments amends Section 243(a)(1) of the 2002 Act to read:

(a)(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this chapter to which the person was not entitled, including a payment referred to in subsection (b), such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary shall waive such repayment if such agency or the Secretary determines that—

(A) The payment was made without fault on the part of such individual, and

(B) Requiring such repayment would cause a financial hardship for the individual (or the individual’s household, if applicable) when taking into consideration the income and resources reasonably available to the individual (or household) and other ordinary living expenses of the individual (or household).

Administration: Section 243(a)(1) of the 2002 Act provided that a CSA “may waive” repayment of any payment made in error where “the payment was made without fault” on the worker’s part and where requiring repayment “would be contrary to equity and good conscience.” The 2009 Amendments retained the requirement that “the payment was made without fault” on the worker’s part, but amended that section to make waiver of repayment mandatory (“shall waive”) where the worker’s financial circumstance meet specific criteria (as opposed to the general standard of “contrary to equity and good conscience”). By making waiver mandatory where the worker meets specific criteria for waiver (as long as the worker is not at fault), the 2009 Act supersedes 20 CFR 617.55(a)(2)(ii).

The new waiver criterion requires that recovery of the overpayment must be waived if it would “cause a financial

hardship for the individual (or the individual’s household, if applicable), when taking into consideration the income and resources reasonably available to the individual (or household) and other ordinary living expenses of the individual (or household).” This standard is more generous than the standard that 20 CFR 617.55(a)(2)(ii) establishes, which requires the CSA to consider whether repayment of the overpayment would, among other things, cause “extraordinary and lasting financial hardship * * *.” Section 617.55(a)(2)(ii)(C)(1) defines that term as meaning that overpayment recovery would “result directly” in the “loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time” and “may be expected to endure for the foreseeable future.” By including explicit statutory waiver criteria in the 2009 Act, Congress intended that overpaid individuals who are without fault and unable to repay their TAA overpayments must be granted a reasonable opportunity for waivers of overpayments. The Department is considering whether to provide further guidance on this new standard prior to the completion of rulemaking.

D. Training

D.1. Cap on Training Funds

Statutory Change: Section 1828 of the 2009 Amendments amends Section 236(a)(2)(A) of the 2002 Act to read:

(2)(A) The total amount of payments that may be made under paragraph (1) shall not exceed—

(i) For each of the fiscal years 2009 and 2010, \$575,000,000; and

(ii) For the period beginning October 1, 2010, and ending December 31, 2010, \$143,750,000.

Administration: Section 236(a)(2)(A) limits the amount available to pay the costs of approved training each year. The 2009 Amendments raise the amount from the \$220 million available each fiscal year since 2002, to \$575 million for each of fiscal years 2009 and 2010, and \$143,750,000 for the first quarter of fiscal year 2011.

D.2 Pre-Separation Training

D.2.1 Adversely Affected Incumbent Workers Defined

Statutory Change: Section 1830 of the 2009 Amendments amends Section 247 of the 2002 Act by adding subsection (19), which reads:

(19) The term ‘adversely affected incumbent worker’ means a worker who—

(A) Is a member of a group of workers who have been certified as eligible to apply for adjustment assistance under subchapter A;

(B) Has not been totally or partially separated from adversely affected employment; and

(C) The Secretary determines, on an individual basis, is threatened with total or partial separation.

Administration: As discussed in Section D.2.2 below, the 2009 Act provides that training may be approved before separation for adversely affected incumbent workers. This provision defines an adversely affected incumbent worker as a worker who: (1) Is a member of a group of workers that has been certified as eligible to apply for TAA benefits, (2) has not been totally or partially separated from employment and thus does not have a qualifying separation, and (3) is determined to be individually threatened with total or partial separation. A CSA may determine that a worker has been individually threatened with separation when the worker has received a notice of termination or layoff from employment. The CSA also may accept other documentation of a threat of total or partial separation from the firm or other reliable source in making a determination that a worker is an adversely affected incumbent worker entitled to pre-separation training.

Section 617.4(d)(ii) of 20 CFR requires the CSA, upon notice of a certification, to notify each worker covered by a TAA certification of program benefits as soon as possible after the partial or total separation. A CSA satisfies this requirement by obtaining from the firm, or other reliable source, the names and addresses of all workers who were or became totally or partially separated before the CSA received the certification and within the certification period, as well as workers subsequently separated during the certification period. Because of the statutory expansion of the TAA training benefit to adversely affected incumbent workers, the new Secretary/Governor Agreement requires the CSA to notify these workers of their possible entitlement to TAA-training as soon as possible before their partial or total separations. Thus, the CSA must identify, through the firm or other reliable source, the names and addresses of all adversely affected incumbent workers to permit the CSA to determine whether a worker is individually threatened with separation. Accordingly, CSAs must request a separate list of workers who are threatened with separation at the same time they request the list of adversely affected workers from the employer.

D.2.2 Extension of Benefits To Adversely Affected Incumbent Workers

Statutory Change: Section 1830 of the 2009 Amendments amends Section 236(a) of the Act by adding the phrase “or an adversely affected incumbent worker” after “adversely affected worker,” in the criteria for the approval of training for these two types of workers. In doing so, the 2009 Amendments extend to “adversely affected incumbent workers” the same training benefits provided to “adversely affected workers” under the Act, except as provided in Section 236(a)(10), which is discussed below in subparagraph E.2.3 of these Operating Instructions.

Administration: This provision allows workers threatened with total or partial separation from adversely affected employment to begin TAA-approved training before the date of that separation. “Pre-layoff training” is not the same as incumbent worker training programs allowable under Section 134(a)(3) of the WIA, 29 U.S.C. 2864(a)(3). The goal of WIA incumbent worker training programs is retraining the worker with new skills to allow the worker to continue employment with an employer. TAA pre-separation training is intended to allow earlier intervention where layoffs are planned in advance and the employer can specifically identify which workers will be affected. Adversely affected incumbent workers may begin training prior to layoff, thereby lessening the amount of time needed to complete the training program after the separation occurs, and lessening the worker’s overall length of unemployment.

The criteria and limitations for approval of training for adversely affected incumbent workers are the same as they are for adversely affected workers, except as discussed below in section D.2.3 of these Operating Instructions. Adversely affected incumbent workers, like adversely affected workers, are entitled to employment and case management services, as described in section G, to ensure that they have the same assistance in developing a reemployment plan and choosing training.

D.2.3 Incumbent Worker Exclusions

Statutory Change: Section 1830 of the 2009 Amendments amends Section 236(a) of the 2002 Act by adding paragraph (10):

(10) In the case of an adversely affected incumbent worker, the Secretary may not approve—

(A) On-the-job training under paragraph (5)(A)(i); or

(B) Customized training under paragraph (5)(A)(ii), unless such training is for a position other than the worker’s adversely affected employment.

Administration: Pre-layoff training may not be approved if it consists of or includes on-the-job training. Moreover, a CSA may not approve customized training, meaning training that is designed to meet the special requirements of one or more employers, for an adversely affected incumbent worker unless such training is for a position other than the worker’s position in the adversely affected employment. CSAs will need to ensure that the training being provided is for a different position than the worker’s current position if the training is being provided under agreement with the worker’s current employer. An incumbent worker may receive pre-separation training for another position with the worker’s current employer, but only if the position is not similarly threatened by trade, i.e. the new position is outside of a subdivision with a trade-certified worker group.

D.2.4 Loss of Threat to Separation

Statutory Change: Section 1830 of the 2009 Amendments amends Section 236(a) of the 2002 Act to add paragraph (11):

(11) If the Secretary determines that an adversely affected incumbent worker for whom the Secretary approved training under this section is no longer threatened with a total or partial separation, the Secretary shall terminate the approval of such training.

Administration: CSAs must evaluate whether the threat of total or partial separation continues to exist for the duration of the pre-layoff training. This can be accomplished by verifying with the employer that the threat of separation still exists before each subsequent portion of the training is funded. If the threat of separation is removed during a training program, funding of the training must cease. The worker would be eligible to complete any portion of the training program where TAA funds have already been expended, but would not be eligible for further TAA funding of the training program in the absence of a threatened or actual separation from the adversely affected employment. The worker may resume the approved training program upon the resumption of the threat or in the event of a total qualifying separation, if the six criteria for approval of the training under Section 236(a)(1) are still met.

Section 617.22(f)(2) of 20 CFR permits a worker approval of one training program per certification. A training program begun prior to separation

counts as that one training program, and the training plan should be designed to meet the long-term needs of the worker based on the expectation that they will be laid off. The training program should also take into account the availability of up to 156 weeks of training. Thus, while a pre-separation training program may be resumed, a worker who has participated in pre-separation training will not be eligible for a new and different training program.

D.3 Part-Time Training

Statutory Change: Section 1830 of the 2009 Act amends Section 236 of the 2002 Act by adding subsection (h), which reads:

(h) PART-TIME TRAINING.—

(1) IN GENERAL.—The Secretary may approve full-time or part-time training for a worker under subsection (a).

(2) LIMITATION.—Notwithstanding paragraph (1), a worker participating in part-time training approved under subsection (a) may not receive a trade readjustment allowance under section 231.

Administration: New subsection (h) allows workers to choose either part-time or full-time training, although workers enrolled in part-time training are not eligible for TRA. This amendment supersedes 20 CFR 617.22(f)(4), limiting training to full-time programs. The training approval criteria at 20 CFR 617.22 (a) (1—6) that apply to the approval of full-time training also apply to the approval of part-time training. Since part-time training will not be accompanied by TRA, see Section D.5.1 of these Operating Instructions, which discusses a new statutory provision (Section 236(a)(9)(B)(i)) permitting a CSA to approve training for a period longer than the worker’s period of eligibility for TRA if the worker demonstrates a financial ability to complete the training after the worker’s eligibility period. Additionally, participation in part-time training can allow a worker to participate in full-time work, even if that work is not suitable employment, as defined at Section 236(e).

D.4 Length of Training

The Act does not include a specific limitation on the length of approvable training. 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. The 2002 amendments extended the maximum duration of TRA to 104 weeks for most workers, but also added up to 26 weeks of TRA for workers requiring remedial education, for a total potential

of up to 130 weeks of income support. Accordingly, TEGL No. 11–02 extended the maximum duration of approvable training for workers who require remedial education to 130 weeks to match the maximum duration of TRA availability.

As discussed in section C.5.2 of these Operating Instructions, the 2009 Act provides up to 26 more weeks of additional TRA to workers for a potential total of 130 weeks of income support for most workers, as well as up to 26 more weeks for workers who require either remedial education or prerequisite training for a total of up to 156 weeks of available income support. DOL interprets these amendments as allowing approval of training for a maximum of 156 weeks (during which training is conducted), consistent with the 156-week maximum duration of income support. The 2009 Act also allows approval of training that extends beyond the weeks of TRA available to the individual worker, as explained in Section D.5.1 of these Operating Instructions. Most workers will not have 156 or 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 UI.

D.5 Approval of Training

The 2009 amendments left unchanged the six criteria for approval of training at Section 236(a)(1)(A–F) of the 2002 Act. Accordingly, 20 CFR 617.22, describing the administration of the training approval criteria, is still applicable, and will be interpreted in the context of the 2009 Amendments, as elaborated upon in the following sections of these Operating Instructions.

Section 236(a)(1) provides that if the CSA determines, with respect to an adversely affected worker or an adversely affected incumbent worker, that:

(A) There is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) The worker would benefit from appropriate training,

(C) There is a reasonable expectation of employment following completion of such training,

(D) Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers),

(E) The worker is qualified to undertake and complete such training, and

(F) Such training is suitable for the worker and available at a reasonable cost, the

Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on the worker's behalf by the Secretary directly or through a voucher system.

D.5.1 Qualifications To Be Applied for Extended Training

Statutory Change: Section 1828 of the 2009 Amendments amends Section 236(a)(9)(B) of the 2002 Act by adding clause (i), which reads:

(B)(i) In determining under paragraph (1)(E) whether a worker is qualified to undertake and complete training, the Secretary may approve training for a period longer than the worker's period of eligibility for trade readjustment allowances under part I if the worker demonstrates a financial ability to complete the training after the expiration of the worker's period of eligibility for such trade readjustment allowances.

Administration: New Section 236(a)(9)(B)(i) provides that when determining under Section 236(a)(1)(E) whether the worker is qualified to undertake and complete training, the State may approve training for longer than the worker's period of TRA eligibility if the worker demonstrates the financial ability to complete the training after the expiration of the TRA eligibility period. This section mirrors 20 CFR 617.22(a)(5)(ii) and (iii), permitting training approval where a worker's personal or family resources are adequate to complete training.

This new section makes it possible for workers to have access to long-term training such as a two-year Associate's degree, a nursing certificate, or completion of a four-year degree if that four-year degree was previously initiated. States must not limit training approvals only to short-term programs, and must, where the worker requests it, consider approval of training for longer than the individual worker's available remaining weeks of income support. For example, delayed enrollment in training may result in the exhaustion of some basic TRA when an adversely affected worker does not immediately enter training due to job search activities. Training may be approved, provided that the other training approval criteria are also met, for a period that is longer than the period for which TRA is available if the worker demonstrates the financial ability to support him/herself through the completion of the training. Financial ability means the ability to pay living expenses while in TAA-approved training after the period of TRA eligibility.

Training which will exceed the 156 maximum number of weeks currently

allowed may not be paid for under the TAA program at this time. Consideration will be given to expanding the approval to include longer term training approval in the rule making process envisioned by the Department to implement the new provisions of the 2009 Act.

D.5.2 Reasonable Cost

Statutory Change: Section 1828 of the 2009 Amendments also amends Section 236(a)(9)(B) of the 2002 Act to add clause (ii):

(ii) In determining the reasonable cost of training under paragraph (1)(F) with respect to a worker, the Secretary may consider whether other public or private funds are reasonably available to the worker, except that the Secretary may not require a worker to obtain such funds as a condition of approval of training under paragraph (1).

Administration: Section 236(a)(9)(B) provides that when determining whether the cost of training is reasonable, the CSA will consider whether other public or private funds are available to the worker. This section ensures that training programs that would otherwise not be approved under TAA due to costs may be approved if a worker voluntarily commits to using public or private funds to pay a portion of the costs of training. Private funds may include grants (with the exception of certain student financial assistance, explained below), scholarships, employer funding, or other sources available to the participant not requiring the use of funds personal to the worker, relatives, or friends. Sections 617.22(h), 617.25(b)(1)(iii), and 617.25(b)(5)(ii) of 20 CFR prohibiting the use of funds personal to the worker remain in effect until such time as they are amended through notice and comment rulemaking. Further, a CSA may not require the worker to obtain other funds as a condition for approval of training. If the worker volunteers to use other funds to supplement the TAA training funds when the cost of training is otherwise not reasonable, the training program will be approved, if the other training approval criteria are met.

Significantly, a provision of the Higher Education Act of 1965, codified at 20 U.S.C. 1087uu, provides that "notwithstanding any other law," certain types of student financial assistance (Pell Grants, benefits under Supplemental Educational Opportunity Grants, Federal educational loan programs, Presidential Access Scholarships, Federal student work-study programs, and Bureau of Indian Affairs Student Assistance) "shall not be taken into account in determining the need or eligibility of any person for

benefits or assistance, or the amount of such benefits or assistance, under any Federal * * * program * * *.”

Therefore, a CSA may not consider the student financial assistance in determining whether to approve training. This allows a worker to use student financial assistance for living expenses instead of tuition and thus provides the worker income support during long-term training. However, the worker may voluntarily choose to apply student financial assistance to the costs of training, if the training would not be approved because the costs would otherwise be found to be unreasonable.

Regarding the “reasonable cost” criterion for training approval, it should be noted that the Department has not prohibited the limited use of “training caps” on the amount of training costs a CSA considers reasonable. A CSA may determine a maximum reasonable cost for training in the State, but only with a mechanism for exceeding that maximum when that results in the most reasonable and cost effective way of returning the trade affected worker to sustainable employment. Beyond this, the CSA must ensure that any “caps” developed are sufficient to cover the reasonable cost of suitable training for high growth, demand, and green occupations in all localities to which those caps apply.

Regulatory guidance for determining “reasonable cost” is found at 20 CFR 617.22(6). Specifically, the regulations dictate that, for the purpose of determining reasonable costs of training, the CSA considers:

(A) Costs of a training program shall include tuition and related expenses (books, tools, and academic fees), travel or transportation expenses, and subsistence expenses;

(B) In determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training which is available within the commuting area. When training, substantially similar in quality, content and results, is offered at more than one training provider, the lowest cost training shall be approved; and

(C) Training at facilities outside the worker’s normal commuting area that involves transportation or subsistence costs which add substantially to the total costs shall not be approved if other appropriate training is available. In approving training, CSAs must consider cost, suitability for the worker, and quality and results. A CSA may approve a more expensive training program that is of demonstrably higher quality or that may be expected to produce better

results for the worker in quickly returning to suitable employment.

D.5.3 Apprenticeship, Higher Education and WIA Programs

Statutory Change: Section 1829 of the 2009 Act amends Section 236(a)(5) of the 2002 Act to read as follows:

(5) Except as provided in paragraph (10), the training programs that may be approved under paragraph (1) include, but are not limited to—

(A) Employer-based training, including—
 (i) On-the-job training,
 (ii) Customized training, and
 (iii) Apprenticeship programs registered under the Act of August 16, 1937 (commonly known as the ‘National Apprenticeship Act’; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*).

(B) Any training program provided by a State pursuant to Title I of the Workforce Investment Act of 1998,

(C) Any training program approved by a private industry council established under section 102 of such Act,

(D) Any program of remedial education,

(E) Any program of prerequisite education or coursework required to enroll in training that may be approved under this section,

(F) Any training program (other than a training program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—

(i) Under any Federal or State program other than this chapter, or

(ii) From any source other than this section,

(G) Any other training program approved by the Secretary, and

(H) Any training program or coursework at an accredited institution of higher education (described in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)), including a training program or coursework for the purpose of—

(i) Obtaining a degree or certification; or
 (ii) Completing a degree or certification that the worker had previously begun at an accredited institution of higher education.

The Secretary may not limit approval of a training program under paragraph (1) to a program provided pursuant to title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*).

Administration: These provisions clarify that the TAA program can pay for registered apprenticeship programs, any prerequisite education required to enroll in training, and training at an accredited institution of higher education including training to obtain or complete a degree or certificate program that reasonably can be expected to result in employment.

Registered Apprenticeship programs offer workers employment and a combination of on-the-job learning and related instruction. Since, in apprenticeship programs, the employer pays all of the apprentice’s wages, the on-the-job learning portion of apprenticeship training is not

considered to be on-the-job training as defined in Section 236(c). Apprentices are employed at the start of their apprenticeship and work through a series of defined curricula until the completion of their apprenticeship programs. The length of registered apprenticeship programs varies depending on the specific occupation. Adversely affected workers can access registered apprenticeship programs by contacting their State’s Registered Apprenticeship Office (Contact information is available on-line at: <http://www.doleta.gov/oa/sainformation.cfm>).

TAA funds can be used to pay for the expenses associated with related instruction (e.g., classroom and distance learning), tools, uniforms, equipment and/or books for an adversely affected worker’s participation in a registered apprenticeship program. These TAA funds can be used until the worker reaches “suitable employment” (which is the purpose of training) or 156 weeks, whichever comes first, while participating in the registered apprenticeship program. Suitable employment as defined in Section 236 of the Act means work of substantially equal or higher skill level than the worker’s past adversely affected employment, and wages for such work at not less than 80 percent of the worker’s average weekly wage.

Additionally, because registered apprenticeship combines classroom instruction with employment, adversely affected workers enrolled in a registered apprenticeship program may not be able to access TRA income support due to their income earned through wages. However, the use of the RTAA benefit as described in Section H of these Operating Instructions may be an option for adversely affected workers who are being trained and employed through a registered apprenticeship program. In the case of registered apprenticeship, a key factor for access to and use of RTAA funds are the wages for the workers’ past adversely affected employment, as compared to their current wages while employed in a registered apprenticeship program as well as meeting the age requirement of being age 50 or older.

Until the 2009 Act, the statute did not explicitly provide that TAA training funds may be used to obtain a college or advanced degree although most States do use the funds to assist workers to complete such degrees. The addition of Section 236(a)(5)(H) is intended to encourage CSAs to approve the use of training under TAA to obtain a two-year certificate or degree, or to complete a four-year (or more) degree that has been started and can be completed in a 156-

week period. The Department may consider this issue further in upcoming rulemaking.

Additionally, WIA-approved training is an approvable TAA training option. However, the amendment of Section 236(a)(5) of the 2002 Act expressly provides that training options available under the TAA program are not limited to training programs available under Title I of WIA.

D.6 On-the-Job Training

Statutory Change: Section 1831 of the 2009 Amendments amends Section 236(c)(1)–(4) of the 2002 Act to read:

(1) IN GENERAL.—The Secretary may approve on-the-job training for any adversely affected worker if—

(A) The worker meets the requirements for training to be approved under subsection (a)(1);

(B) The Secretary determines that on-the-job training—

(i) Can reasonably be expected to lead to suitable employment with the employer offering the on-the-job training;

(ii) Is compatible with the skills of the worker;

(iii) Includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and

(iv) Can be measured by benchmarks that indicate that the worker is gaining such knowledge or skills; and

(C) The State determines that the on-the-job training program meets the requirements of clauses (iii) and (iv) of subparagraph (B).

(2) MONTHLY PAYMENTS.—The Secretary shall pay the costs of on-the-job training approved under paragraph (1) in monthly installments.

(3) CONTRACTS FOR ON-THE-JOB TRAINING.—

(A) IN GENERAL.—The Secretary shall ensure, in entering into a contract with an employer to provide on-the-job training to a worker under this subsection, that the skill requirements of the job for which the worker is being trained, the academic and occupational skill level of the worker, and the work experience of the worker are taken into consideration.

(B) TERM OF CONTRACT.—Training under any such contract shall be limited to the period of time required for the worker receiving on-the-job training to become proficient in the job for which the worker is being trained, but shall not exceed 104 weeks in any case.

(4) EXCLUSION OF CERTAIN EMPLOYERS.—The Secretary shall not enter into a contract for on-the-job training with an employer that exhibits a pattern of failing to provide workers receiving on-the-job training from the employer with—

(A) Continued, long-term employment as regular employees; and

(B) Wages, benefits, and working conditions that are equivalent to the wages, benefits, and working conditions provided to regular employees who have worked a similar period of time and are doing the same

type of work as workers receiving on-the-job training from the employer.

Administration: CSAs may approve “on-the-job” training (OJT) for a worker meeting the approval criteria of Section 236(a)(1), implemented at 20 CFR 617.22 (a), and the OJT criteria of Section 236(c)(1)(B).

Criterion (1) (Section 236(c)(1)(B)(i)) requires that the OJT can reasonably lead to employment with the OJT employer. The 2002 Act removed this requirement completely, but the 2009 Act reinstates it. However, approval should be conditioned on whether the OJT can reasonably lead to employment with the OJT employer, and not that there is a guarantee of employment with the OJT employer. Criterion (2) (Section 236(c)(1)(B)(ii)) requires that the OJT is compatible with the worker’s skills. Criterion (3) (Section 236(c)(1)(B)(iii)) requires the OJT to allow the worker to become proficient in the job for which the worker is being trained. Criterion (4) (Section 236(c)(1)(B)(iv)) requires the State to be able to identify benchmarks or systematically evaluate whether the worker is gaining knowledge or skills.

Under the 2009 Act, OJT is simply one of several training options for workers. The 2009 Amendments repealed the requirement at Section 236(a)(1) that “[i]nsofar as possible,” training be provided on the job.

Further, while the 2002 Act required payment for OJT to be made in equal monthly installments, the 2009 Act requires only that payment be made on a monthly basis. The 2009 Act expressly limits OJT contracts to no more than 104 weeks. Lastly, the 2009 Act also provides that employers that exhibit a pattern of failing to provide workers with continued long-term employment, and adequate wages, benefits and working conditions as regular employees are excluded from OJT contracts.

D.7. UI and TAA Benefits While in Training

Statutory Change: Section 1832 of the 2009 Amendments amends Section 236(d) of the 2002 Act to read:

(d) ELIGIBILITY.—An adversely affected worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter—

(1) Because the worker—

(A) Is enrolled in training approved under subsection (a);

(B) Left work—

(i) That was not suitable employment in order to enroll in such training; or

(ii) That the worker engaged in on a temporary basis during a break in such training or a delay in the commencement of such training; or

(C) Left on-the-job training not later than 30 days after commencing such training because the training did not meet the requirements of subsection (c)(1)(B); or

(2) Because of the application to any such week in training of the provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work.

Administration: The 2009 amendments codify the current regulations at 20 CFR 617.18 regarding disqualification of trainees from UI or TRA. In addition, the 2009 Amendments add two new circumstances under which a CSA may not deny UC—because the worker left work that the worker engaged in on a temporary basis during a break in training or a delay in the commencement of that training, and that the worker left OJT not later than 30 days after commencing such training because the training did not meet the requirements of Section 236(c)(1)(B). That section provides for the approval of OJT where the CSA determines that it can reasonably be expected to lead to suitable employment with the employer offering the OJT; is compatible with the skills of the worker; includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and can be measured by benchmarks that indicate that the worker is gaining that knowledge or skills.

E. Job Search Allowances

Statutory Change: Section 1833 of the 2009 Amendments amends Section 237 of the 2002 Act to read:

(a) JOB SEARCH ALLOWANCE AUTHORIZED.—

(1) IN GENERAL.—An adversely affected worker covered by a certification issued under subchapter A of this chapter may file an application with the Secretary for payment of a job search allowance.

(2) APPROVAL OF APPLICATIONS.—The Secretary may grant an allowance pursuant to an application filed under paragraph (1) when all of the following apply:

(A) ASSIST ADVERSELY AFFECTED WORKER.—The allowance is paid to assist an adversely affected worker who has been totally separated in securing a job within the United States.

(B) LOCAL EMPLOYMENT NOT AVAILABLE.—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) APPLICATION.—The worker has filed an application for the allowance with the Secretary before—

(i) The later of—

(I) The 365th day after the date of the certification under which the worker is certified as eligible; or

(II) The 365th day after the date of the worker's last total separation; or

(i) The date that is the 182nd day after the date on which the worker concluded training.

(b) AMOUNT OF ALLOWANCE.—

(1) IN GENERAL.—An allowance granted under subsection (a) shall provide reimbursement to the worker of all cost of necessary job search expenses as prescribed by the Secretary in regulations.

(2) MAXIMUM ALLOWANCE.—

Reimbursement under this subsection may not exceed \$1,500 for any worker.

(3) ALLOWANCE FOR SUBSISTENCE AND TRANSPORTATION.—Reimbursement under this subsection may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b)(1) and (2).

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

Administration: The qualifying conditions for job search allowances are largely unchanged.

The 2009 Amendments repeal the exception for workers who received a waiver of the training requirement from the requirement to file a job search allowance application within 182 days after the worker completes training. This exception appears to have been meaningless, since it eliminates the deadline for workers who enter training after the expiration or termination of a waiver, but requires workers who enter training without ever having had a waiver to file an application within 182 days after completing training. Accordingly, 20 CFR 617.31(c)(2) interpreted the 182-day application requirement as applying regardless of whether the worker received a training waiver—and Congress apparently concurred with the Department's interpretation that the exception was meaningless by repealing it.

The 2009 Act also raises the reimbursement amount for allowable job search expenses from 90 percent to 100 percent of those expenses, and increases the maximum amount payable to the worker from \$1,250 to \$1,500.

States must continue to administer job search allowances in accordance with 20 CFR part 617, subpart D, except that "90 percent" in section 617.34(a) will be read as "100 percent," and "\$800" (from a prior amendment to the Trade Act) in section 617.34(b) will be read as "\$1,500."

F. Relocation Allowances

Statutory Change: Section 1833 of the 2009 Amendments amends Section 238 of the 2002 Act to read:

(a) RELOCATION ALLOWANCE AUTHORIZED.—

(1) IN GENERAL.—Any adversely affected worker covered by a certification issued under subchapter A of this chapter may 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.

(2) CONDITIONS FOR GRANTING ALLOWANCE.—A relocation allowance may be granted if all of the following terms and conditions are met:

(A) ASSIST AN ADVERSELY AFFECTED WORKER.—The relocation allowance will assist an adversely affected worker in relocating within the United States.

(B) LOCAL EMPLOYMENT NOT AVAILABLE.—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) TOTAL SEPARATION.—The worker is totally separated from employment at the time relocation commences.

(D) SUITABLE EMPLOYMENT OBTAINED.—The worker—

(i) Has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wishes to relocate; or

(ii) Has obtained a bona fide offer of such employment.

(E) APPLICATION.—The worker filed an application with the Secretary before

(i) The later of—

(I) The 425th day after the date of the certification under subchapter A of this chapter; or

(II) The 425th day after the date of the worker's last total separation; or

(ii) The date that is the 182d day after the date on which the worker concluded training.

(b) AMOUNT OF ALLOWANCE.—The relocation allowance granted to a worker under subsection (a) includes—

(1) All 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 \$1,500.

(c) LIMITATIONS.—A relocation allowance may not be granted to a worker unless—

(1) The relocation occurs within 182 days after the filing of the application for relocation assistance; or

(2) The relocation occurs within 182 days after the conclusion of training, if the worker entered a training program approved by the Secretary under section 236(b)(1) and (2).

Administration: The qualifying requirements for relocation allowances are largely unchanged.

The 2009 Amendments repeals the exception for workers who received a waiver of the training requirement from the requirement to file a relocation

allowance application within 182 days after the worker completes training.

This exception appears to be meaningless, since it eliminates the deadline for workers who enter training after the expiration or termination of a waiver, but requires workers who enter training without ever having had a waiver to file an application within 182 days after completing training. Accordingly, 20 CFR 617.31(c)(2) interpreted the 182-application requirement as applying regardless of whether the worker received a training waiver—and Congress apparently concurred with the Department's interpretation that the exception was meaningless by repealing it.

The 2009 Act also raises the reimbursement amount for allowable relocation expenses from 90 percent to 100 percent of those expenses, and increases the maximum amount of the lump sum payment to the worker from \$1,250 to \$1,500.

States must continue to administer relocation allowances in accordance with 20 CFR part 617, subpart D, except that "90 percent" in section 617.34(a) will be read as "100 percent," and "\$800" (from a prior amendment to the Trade Act) in section 617.34(b) will be read as "\$1,500."

G. Employment and Case Management Services

G.1 Provision of Services

Statutory Change: Section 1826 of the 2009 Amendments amends Section 235 of the 2002 Act to read:

SEC. 235. EMPLOYMENT AND CASE MANAGEMENT SERVICES.

The Secretary shall make available, directly or through agreements with States under section 239, to adversely affected workers and adversely affected incumbent workers covered by a certification under subchapter A of this chapter the following employment and case management services:

(1) Comprehensive and specialized assessment of skill levels and service needs, including through—

(A) Diagnostic testing and use of other assessment tools; and

(B) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

(2) Development of an individual employment plan to identify employment goals and objectives, and appropriate training to achieve those goals and objectives.

(3) Information on training available in local and regional areas, information on individual counseling to determine which training is suitable training, and information on how to apply for such training.

(4) Information on how to apply for financial aid, including referring workers to educational opportunity centers described in section 402F of the Higher Education Act of 1965 (20 U.S.C. 1070a-16), where applicable,

and notifying workers that the workers may request financial aid administrators at institutions of higher education (as defined in section 102 of such Act (20 U.S.C. 1002)) to use the administrators' discretion under section 479A of such Act (20 U.S.C. 1087tt) to use current year income data, rather than preceding year income data, for determining the amount of need of the workers for Federal financial assistance under title IV of such Act (20 U.S.C. 1070 et seq.).

(5) Short-term prevocational services, including development of learning skills, communications skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for employment or training.

(6) Individual career counseling, including job search and placement counseling, during the period in which the individual is receiving a trade adjustment allowance or training under this chapter, and after receiving such training for purposes of job placement.

(7) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(A) Job vacancy listings in such labor market areas;

(B) Information on jobs skills necessary to obtain jobs identified in job vacancy listings described in subparagraph (A);

(C) Information relating to local occupations that are in demand and earnings potential of such occupations; and

(D) Skills requirements for local occupations described in subparagraph (C).

(8) Information relating to the availability of supportive services, including services relating to child care, transportation, dependent care, housing assistance, and need-related payments that are necessary to enable an individual to participate in training.

Administration: The 2002 Act required CSAs to "make every reasonable effort" to provide adversely affected workers the listed services through other programs. The 2009 Act now requires that these services be offered to all adversely affected workers and adversely affected incumbent workers. The required services may be provided by staff funded by the new case management funds authorized under the Act (discussed below), or by staff funded under partner programs.

Co-enrollment or multiple-enrollment allows trade-affected workers to receive supportive services that may assist in a quicker transition to work. It is vitally important that States develop a goal, or informal deadline, for administering assessment of workers in order to determine training and reemployment needs. This will provide data for State officials to make a more accurate employability determination and issue TAA waivers of training. Likewise, early assessment will give case management staff the information necessary to

advise, counsel, and refer participants to the appropriate partner/training provider. Many States have provided case management activities and related services in the past through co-enrollment in other Federal programs (usually WIA and Wagner-Peyser programs). The Department expects CSAs to continue this practice. CSAs that have not fully used co-enrollment now have an opportunity to use more integrated service strategies. Expertise in providing these services already exists within the WIA and Wagner-Peyser programs.

A CSA must offer workers each of the services set forth in Section 235. It must demonstrate that it has provided or offered these services either in a paper-based case file or in an electronic case management system, which must be available for review. Additionally, the case management file of each participant must demonstrate that the CSA notified each worker of his/her enrollment in training deadlines.

The purpose of these employment and case management services is to provide workers the necessary information and support for them to achieve sustainable reemployment. Therefore, these services must be made available to workers over the course of their participation in the TAA program, in an integrated manner that suits their individual needs at a particular time. For example, skill assessments must be geared towards evaluating whether the worker meets the TAA training criteria or matches up to specific career opportunities in the community. The individual employment plan must use and be guided by the results of the skill assessments. The employment plan should, in turn, lead to support for finding suitable employment and/or development of a training plan that addresses any skill gaps made evident by the assessments, including remedial or prerequisite training where appropriate. Career counseling and labor market information must also inform the development of the employment and training plans. Information on financial aid and supportive services must be available as they are needed by the individual. Career counseling and other informational resources must also be available after an individual completes training, through his/her reemployment and exit from the TAA program.

CSAs should minimize the extent to which they establish new or stand alone employment and case management structures for TAA program participants where these services are available within the workforce development system. Rather, CSAs should fully

integrate TAA participants and resources into the One-Stop Career Center system, thereby maximizing and enhancing existing employment and case management structures. As stated in Section II.B of the Governor-Secretary Agreement, "The State agrees that the TAA program is a required partner in the comprehensive One-Stop system established under the Workforce Investment Act of 1998 (WIA) (29 U.S.C. 2801 et seq.) (see WIA Section 121(b)(1)(B)(viii), 29 U.S.C. 2841(b)(1)(B)(viii)). The State will ensure integration of the TAA program into its One-Stop system and will comply with all applicable laws, regulations, and policy guidance issued under the WIA. The State will use One-Stop Career Centers as the main point of participant intake and delivery of benefits and services."

Early intervention services that include orientation; initial assessment of skill levels, aptitudes, and abilities; provision of labor market information; job search assistance; and financial management workshops continue to be a priority for workers in the TAA program. We encourage TAA staff to work with WIA staff to align resources and develop clear plans for coordination.

G.2 Funding

Statutory Change: Section 1826 of the 2009 Amendments adds Section 235A to the 2002 Act:

SEC. 235A. FUNDING FOR ADMINISTRATIVE EXPENSES AND EMPLOYMENT AND CASE MANAGEMENT SERVICES.

(A) FUNDING FOR ADMINISTRATIVE EXPENSES AND EMPLOYMENT AND CASE MANAGEMENT SERVICES.—

(1) IN GENERAL.—In addition to any funds made available to a State to carry out section 236 for a fiscal year, the State shall receive for the fiscal year a payment in an amount that is equal to 15 percent of the amount of such funds.

(2) USE OF FUNDS.—A State that receives a payment under paragraph (1) shall—

(A) Use not more than 2/3 of such payment for the administration of the trade adjustment assistance for workers program under this chapter, including for—

(i) Processing waivers of training requirements under section 231;

(ii) Collecting, validating, and reporting data required under this chapter; and

(iii) Providing reemployment trade adjustment assistance under section 246; and

(B) Use not less than 1/3 of such payment for employment and case management services under section 235.

(b) ADDITIONAL FUNDING FOR EMPLOYMENT AND CASE MANAGEMENT SERVICES.—

(1) IN GENERAL.—In addition to any funds made available to a State to carry out section 236 and the payment under

subsection (a)(1) for a fiscal year, the Secretary shall provide to the State for the fiscal year a payment in the amount of \$350,000.

(2) USE OF FUNDS.—A State that receives a payment under paragraph (1) shall use such payment for the purpose of providing employment and case management services under section 235.

(3) VOLUNTARY RETURN OF FUNDS.—A State that receives a payment under paragraph (1) may decline or otherwise return such payment to the Secretary.

Administration: The 2009 Act provides two separate TAA program funding sources for case management services, one under Section 235A(a) and the second under Section 235A(b).

Section 235A(a) provides funding for “administrative expenses” and “case management services.” Section 235A(a)(2)(A) requires that a CSA will “use not more than 2/3 of” these funds “for the administration of the trade adjustment assistance for workers program,” and Section 235A(a)(2)(B) requires that it will “use not less than 1/3” of these funds “for employment and case management services under section 235.”

In addition to staff costs for career counselors, the “employment and case management services” funds may be used for: Assessment tests; skills transferability analysis; peer counselors; development and provision of labor market information; maintenance and enhancement of electronic case management systems to allow for improved case management services; information on available training, including provider performance and cost information; and, any other staff costs related to case management. This list is not intended to be all inclusive.

With respect to the employment and case management funds, CSAs do not need to maintain the 2/3 to 1/3 ratio on a regular basis. Instead, a determination of whether the CSA has met this ratio requirement will be made during the grant close out process upon expiration of the funds. At that time, expenditures on administration in excess of 2/3 of the allotment for that fiscal year (meaning that expenditures on employment and case management services were less than 1/3 of the allotment) will be considered disallowed costs.

The second source of funding for case management services, under Section 235A(b), is a payment “for the fiscal year * * * in the amount of \$350,000.” The 2009 Act provides that States may decline or return these funds to the Secretary. If a State chooses not to accept the \$350,000 in employment and case management services funds authorized for allotment to States under Section 235A(b) for the next fiscal year,

the CSA should notify the Department, through their appropriate ETA Regional Office, by August 15 of the prior fiscal year in order to ensure that an allocation is not made. If a State receives these funds through the allotment process, but decides to return them to DOL, States must do so as soon as possible.

The employment and case management services funding provided for in this section should be in addition to, and not offset, any funds that the CSA would otherwise receive under WIA or any other program.

G.3 Coordination With WIA

Statutory Change: Section 1852 of the 2009 Amendments amends Section 239 of the 2002 Act by redesignating subsection (f) as subsection (g) and adding to new subsection (g) paragraphs (4) and (5), to read:

Each cooperating State agency shall, in carrying out subsection (a)(2)—

* * * * *

(4) Perform outreach to, intake of, and orientation for adversely affected workers and adversely affected incumbent workers covered by a certification under subchapter A with respect to assistance and benefits available under this chapter, and

(5) Make employment and case management services described in section 235 available to adversely affected workers and adversely affected incumbent workers covered by a certification under subchapter A and, if funds provided to carry out this chapter are insufficient to make such services available, make arrangements to make such services available through other Federal programs.

Administration: As required in the agreements between the Secretary of Labor and the States under Section 239 of the Act, the CSAs must administer outreach, intake, and orientation for adversely affected workers and make employment and case management services as newly described in Section 235 available to workers. If the TAA program funding sources for provision of employment and case management services to workers in the TAA program are insufficient to meet the requirement that these services be offered to all adversely affected workers and adversely affected incumbent workers, the CSA must make arrangements to assure that funding under the WIA or another program is available to provide those services. Multiple enrollment resources may include Wagner-Peyser activities, faith-based and community-based programs, vocational rehabilitation services, and veterans’ programs.

H. Reemployment Trade Adjustment Assistance (RTAA)

H.1. Background

Statutory Change: Section 1841 of the 2009 Amendments amends Section 246(a)(1) of the 2002 Act to read:

(1) ESTABLISHMENT.—The Secretary shall establish a reemployment trade adjustment assistance program that provides the benefits described in paragraph (2).

Administration: The 2009 Act establishes RTAA as a wage supplement option available to older workers under the TAA program. RTAA replaces ATAA, which provided wage supplements as an option for reemployed older workers as a demonstration project under the 2002 Act. Rather than a demonstration program, RTAA is permanent, and has the same expiration date as the rest of the TAA program.

ATAA is extended and remains available to workers certified for ATAA under petitions filed prior to May 18, 2009.

RTAA builds on the basic structure of ATAA, with some important differences:

- The 26-week deadline for reemployment, running from the date of separation from the adversely affected employment is eliminated. This 26-week period frequently began prior to certification, not allowing enough time for workers to find new jobs after learning of their potential eligibility for ATAA.

- A separate certification of group eligibility beyond the TAA certification is no longer required. All certifications include eligibility to apply for RTAA, as well as other TAA benefits.

- Workers opting to participate in the wage supplement program no longer surrender their eligibility for TAA-approved training.

- RTAA may be paid to participants working part-time, if they are enrolled in approved training.

- Workers may collect RTAA after a period of TRA. These changes to the program should make the program more accessible and attractive to workers by removing barriers that existed under ATAA.

- RTAA eligibility requires that the worker “is not employed at the firm from which the worker was separated.” This is a more restrictive requirement than ATAA imposes. That program required only that the worker “does not return to the employment from which the worker was separated,” which the Department interpreted as permitting the worker to return to the separating firm in a different job.

- The maximum benefit that the worker may receive over the course of the eligibility period is increased from \$10,000 to \$12,000.

- The limit on wages in eligible reemployment is increased from \$50,000 to \$55,000.

- RTAA has a different eligibility period than ATAA.

Significantly, workers receiving RTAA may, like ATAA participants, be eligible for the HCTC.

H.2. Group Eligibility

Statutory Change: Section 1841 of the 2009 Amendments amends Section 246(a)(3)(A) of the 2002 Act to read:

(A) IN GENERAL.—A group of workers certified under subchapter A as eligible for adjustment assistance under subchapter A is eligible for benefits described in paragraph (2) under the program established under paragraph (1).

Administration: The new RTAA program eliminates the separate group eligibility requirements under the ATAA program and instead provides that workers in a group certified as eligible to apply for TAA are also eligible to apply for RTAA.

H.3. Individual Eligibility

Statutory Change: Section 1841 of the 2009 Amendments amends Section 246(a)(3)(B) of the 2002 Act to read:

(B) INDIVIDUAL ELIGIBILITY.—A worker in a group of workers described in subparagraph (A) may elect to receive benefits described in paragraph (2) under the program established under paragraph (1) if the worker—

- (i) Is at least 50 years of age;
- (ii) Earns not more than \$55,000 each year in wages from reemployment;
- (iii)(I) Is employed on a full-time basis as defined by the law of the State in which the worker is employed and is not enrolled in a training program approved under section 236; or
- (II) Is employed at least 20 hours per week and is enrolled in a training program approved under section 236; and
- (iv) Is not employed at the firm from which the worker was separated.

Administration: The RTAA program has several differences in individual eligibility from the ATAA program. It eliminates the requirement that the worker obtain full-time employment within 26 weeks of separation from adversely affected employment, increases the maximum an individual may earn in reemployment from \$50,000 to \$55,000, and is not limited to workers employed full-time, but allows workers employed at least 20 hours per week, and enrolled in approved training, to qualify. To be eligible for RTAA, an individual must

meet the following conditions at the time of reemployment:

1. Be at least age 50 at time of reemployment. The individual's age can be verified with a driver's license or other appropriate documentation.

2. Must not be expected to earn more than \$55,000 annually in gross wages, excluding overtime pay, from the reemployment. If a paycheck has not been issued at the time of application, the employer must submit a supporting statement documenting the worker's annual wages.

3. Reemployment:

- a. Be reemployed full-time as defined by the State law where the worker is employed and not enrolled in a TAA-approved training program. If there is no State law addressing the definition of full-time employment, the State must issue a definition of full-time employment for RTAA purposes. The CSA will verify reemployment in the same manner as it uses for ATAA eligibility; or

- b. Be reemployed less than full-time, but at least 20 hours a week, and be enrolled in a TAA-approved training program. Similar to the requirement that TRA benefits may only be paid when enrolled in a full time training program, eligibility for RTAA benefits based on part-time employment and participation in training requires enrollment in a full time training program as well. This requirement helps ensure that workers will not exhaust their limited RTAA benefit before returning to full-time employment, which is the true goal of the TAA program. The verification will be conducted in the same manner as is used for verifying employment for ATAA eligibility and for verifying participation in training.

4. The worker cannot return to employment at the "firm" from which the worker was separated. However, the 2009 Act defines "firm" as either the entire firm or the appropriate subdivision. Accordingly, this requirement means that, if the certification is issued for a worker group in an appropriate subdivision of a firm, the worker may not return to employment with that subdivision, but may return to work at another subdivision of the firm. If, however, the certification is issued for workers in the entire firm, the worker may not return to employment in any subdivision of that firm.

As with ATAA, the CSA will issue a written determination on an RTAA application within 5 working days of its receipt. If approved, the CSA will also notify the appropriate State payment unit and other appropriate component offices within the State. The RTAA

applicant has the right to appeal a State determination which denies RTAA benefits in the same manner as provided for in State UI law for all TAA determinations.

Where a worker seeks to establish RTAA eligibility based upon more than one job, the employment hours will be combined in order to determine whether the worker has the number of hours needed to qualify for RTAA. If the worker obtains additional job(s), the wages from this employment will be included in the calculation to determine whether the worker is expected to reach the \$55,000 annual limit for reemployment wages.

Qualifying employment that was commenced prior to separation from adversely affected employment may be considered RTAA qualifying employment.

H.4. Eligibility Period

Statutory Change: Section 1841 of the 2009 Act amends Section 246(a)(4) of the 2002 Act to read:

(4) ELIGIBILITY PERIOD FOR PAYMENTS.—

(A) WORKER WHO HAS NOT RECEIVED TRADE READJUSTMENT ALLOWANCE.—In the case of a worker described in paragraph (3)(B) who has not received a trade readjustment allowance under part I of subchapter B pursuant to the certification described in paragraph (3)(A), the worker may receive benefits described in paragraph (2) for a period not to exceed 2 years beginning on the earlier of—

- (i) The date on which the worker exhausts all rights to unemployment insurance based on the separation of the worker from the adversely affected employment that is the basis of the certification; or

- (ii) The date on which the worker obtains reemployment described in paragraph (3)(B).

(B) WORKER WHO HAS RECEIVED TRADE READJUSTMENT ALLOWANCE.—In the case of a worker described in paragraph (3)(B) who has received a trade readjustment allowance under part I of subchapter B pursuant to the certification described in paragraph (3)(A), the worker may receive benefits described in paragraph (2) for a period of 104 weeks beginning on the date on which the worker obtains reemployment described in paragraph (3)(B), reduced by the total number of weeks for which the worker received such trade readjustment allowance.

Administration: The eligibility periods for RTAA are different than those under ATAA. The 2009 Act provides two separate eligibility periods, the first for workers who have not received TRA, and the second for workers who have received TRA.

The eligibility period for workers who have not received TRA is a two-year period beginning the earlier of "the date on which the worker exhausts all rights to unemployment insurance based on

the separation of the worker from the adversely affected employment that is the basis of the certification," or reemployment. Section 247(12) defines "unemployment insurance" as "the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law," which includes EUC.

The statutory phrase "worker exhausts all rights to unemployment insurance based on the separation of the worker from * * * adversely affected employment * * *" requires some interpretation. The first point to make is that a worker may have more than one separation from adversely affected employment. Where there is more than one such separation, the relevant separation is the worker's last separation from adversely affected employment that qualifies the worker as an adversely affected worker. The Department chose the last separation because that separation is the one that triggers the worker's application for RTAA. Under 20 CFR 617.3(c), a separation that qualifies a worker as an adversely affected worker is a lack-of-work separation from adversely affected employment. Accordingly, the CSA must determine the worker's last separation for lack of work from adversely affected employment before the RTAA application. This principle applies only to the determination of the eligibility period, and does not apply to the calculation of RTAA payments.

Further, a separation may trigger a benefit year, occur during a benefit year, or not result in any entitlement to UI. If the worker's last separation from adversely affected employment, which qualifies the worker as an adversely affected worker, either triggers a benefit year or occurs within a benefit year, the eligibility period will begin (if earlier than the reemployment) when the worker exhausts that UI eligibility, either by collecting all benefits available on the benefit year or by the expiration of the benefit year. If the worker has no UI entitlement for his/her last separation from adversely affected employment that qualifies him/her as an adversely affected worker, then the two-year period begins on the date on which the worker obtains reemployment.

The eligibility period for a worker who has not received TRA is the two year period (generally 104 weeks) beginning with the date of reemployment, reduced by the number of weeks the worker received TRA. For example, if a worker received 52 weeks of TRA, the eligibility period would be reduced to 52 weeks beginning on the date of reemployment.

The individual's application for RTAA must be filed within the applicable eligibility period as described above. As with ATAA, retroactive payment may be made where appropriate.

H.5. Total Amount of Payments

Statutory Change: Section 1841 of the 2009 Act amends Section 246(a)(5) of the 2002 Act to read:

- (5) TOTAL AMOUNT OF PAYMENTS.—(A) IN GENERAL.—The payments described in paragraph (2)(A) made to a worker may not exceed—
 - (i) \$12,000 per worker during the eligibility period under paragraph (4)(A); or
 - (ii) The amount described in subparagraph (B) per worker during the eligibility period under paragraph (4)(B).
- (B) AMOUNT DESCRIBED.—The amount described in this subparagraph is the amount equal to the product of—
 - (i) \$12,000, and
 - (ii) The ratio of—
 - (I) The total number of weeks in the eligibility period under paragraph (4)(B) with respect to the worker, to
 - (II) 104 weeks.

Administration: The total amount of payments that may be made to workers under RTAA is different than under ATAA. The 2009 Act provides two separate calculations of the maximum amount of payments that may be made to a worker, the first for workers who have not received TRA, and the second for workers who have received TRA.

Workers who have not received TRA may receive a maximum of \$12,000 during the eligibility period described in Section J.4 of the Operating Instructions. This is an increase of \$2,000 over the maximum amount of ATAA available to an adversely affected worker.

Workers who have received TRA may receive an amount equal to the product of \$12,000 and the ratio of the number of weeks in the eligibility period described in Section J.4 above and 104. For example, the calculation for a worker who received 52 weeks of TRA and therefore has a 52-week eligibility period would be as follows:

Factors	
x	Weeks of TRA.
y	Eligibility Period.
z	\$12,000 Maximum RTAA Benefit.
Ratio	
x/y =	Ratio.

Formula	
(x/y) * z =	RTAA Benefit.
Example	
(52/104) * \$12,000 = \$6,000	

H.6. Continuing Eligibility

The structure and procedures established for verification of continuing eligibility under the ATAA program remain in place for the RTAA program, except where noted otherwise. Once approved for the RTAA program, individuals who continue to meet the eligibility criteria are paid RTAA benefits until they reach the end of the eligibility period or the maximum total amount of payments whichever occurs first.

Nothing in the statute precludes an individual from working for different employers within this eligibility period. Further, employment is not required to be consecutive. However, as with ATAA, RTAA benefits are not payable during periods of unemployment, but payment is allowable when the worker is on employer allowed release time, such as sick leave. Changes in employment that do not encompass a period of unemployment will be handled during the State's ongoing review of each worker's RTAA status, as described below. In the event of a period of unemployment, workers will need to complete a new Individual Application for RTAA upon reemployment. The worker would be eligible for the remaining RTAA benefits to which he/she is entitled. The eligibility period continues to run from the date of UI exhaustion or reemployment.

Workers applying for RTAA will need to visit a One-Stop Career Center in person to provide information and establish initial individual eligibility for RTAA. The CSA will need to assess each RTAA claimant's continuing eligibility for RTAA. Whether RTAA entitlement is received on the basis of part-time (at least 20 hours) or full-time employment, the CSA must verify the worker's employment and wage status on at least a monthly basis. If the worker is employed part-time (at least 20 hours per week) and receiving RTAA while in TAA-approved training, the CSA must, on a monthly basis, verify participation in the training.

RTAA payments stop in the event of any one of the following:

- The worker's annualized wages from reemployment are projected to exceed \$55,000 in a year.

- The worker no longer meets the reemployment requirement through either full-time work or a combination of TAA-approved training and at least 20 hours of work. (But, see the caveat in the second paragraph below.)

- The worker has received the maximum amount of RTAA.
- The worker has reached the end of the RTAA eligibility period.

It is the CSA's responsibility, when calculating the RTAA payment, to annualize the recipient's wages on a monthly basis to assure that the recipient's annual wages do not exceed \$55,000. Annual wage calculations include all jobs in which the worker is employed.

As explained above, a worker may qualify for RTAA where the worker is working part-time, provided the worker is enrolled in training. A worker will be excused from the training requirement for any week for which s/he has "justifiable cause," as defined at 20 CFR 617.18(b)(2), for failing to begin or ceasing participation in training. If the worker has justifiable cause for failing to participate in training for a week, but is working at least 20 hours per week, RTAA is payable for that week if the worker is otherwise eligible. If the worker fails to participate in training for a week without justifiable cause, the worker is ineligible for RTAA for that week.

H.7. RTAA Payments

Statutory Changes:

Section 1841 of the 2009 Amendments amends Section 246(a)(2) of the Act to read:

(2) BENEFITS.

(A) PAYMENTS—A State shall use the funds provided to the State under section 241 to pay, for the eligibility period under subparagraph (A) or (B) of paragraph (4) (as the case may be), to a worker described in paragraph (3)(B), 50 percent of the difference between—

- (i) The wages received by the worker at the time of separation; and
- (ii) The wages received by the worker from reemployment.

It also amends Section 246(a)(6) of the Act to read:

(6) CALCULATION OF AMOUNT OF PAYMENTS FOR CERTAIN WORKERS.—

(A) IN GENERAL.—In the case of a worker described in paragraph (3)(B)(iii)(II) [a worker employed at least 20 hours per week an enrolled in training], paragraph (2)(A) [the RTAA benefit amount calculation] shall be applied by substituting the percentage described in subparagraph (B) for '50 percent'.

(B) PERCENTAGE DESCRIBED.—The percentage described in this subparagraph is the percentage—

- (i) Equal to 1/2 of the ratio of—

(I) The number of weekly hours of employment of the worker referred to in paragraph (3)(B)(iii)(II), to

(II) The number of weekly hours of employment of the worker at the time of separation, but

- (ii) In no case more than 50 percent.

Administration: The 2009 Act slightly rewords the benefit calculation found in Section 246(a)(2)(A), but does not change the basic structure of providing 50 percent of the difference between the wages the worker received from the adversely affected employer at the time of separation and the wages the worker receives in new employment for workers who are employed on a full-time basis.

For workers who meet the reemployment requirement described in Section H.3. of the Operating Instructions through a combination of TAA-approved training and at least 20 hours of work, the RTAA benefit calculation is based on a percentage of the difference between the wages the worker received from the adversely affected employer at the time of separation and the wages the worker receives in new employment. The percentage is based on the number of hours worked in new employment as compared to the adversely affected employment. This calculation is illustrated below and in sections H.7.1 and H.7.2.

As with ATAA, in order to establish the RTAA payment, wages at separation are defined as the annualized hourly rate at the time of the most recent separation. Wages at reemployment are defined as the annualized hourly rate at the time of reemployment. Annualized wages at separation are defined as the annualized hourly rate at the time of the most recent qualifying separation. In the case of a worker who had a partial separation, as defined in 20 CFR 617.3(cc), that resulted in a reduction of the worker's wage and/or hours, the calculation should be based on the wages and/or hours immediately before the partial separation went into effect. The annualized wages are computed by multiplying the worker's hourly rate received during the last full week of his/her employment by the number of hours the individual worked during the last full week of employment and multiplying that number by 52. Overtime wages and hours are excluded from the calculation. Annualized wages at reemployment are defined similarly to annualized wages at separation, except that the hourly rate and hours worked must reflect those of the first full week of reemployment.

RTAA may be paid on a weekly, biweekly, or other payment frequency

not to exceed monthly, as established by the CSA, ensuring that the total payment does not exceed the \$12,000 maximum or a period of two-years.

For example, the calculation of a monthly allotment would be derived in one of the two following methods as appropriate:

WAGE CALCULATION METHODOLOGY FACTORS

o	Annualized Old Wages (also Annualized Separation Wages).
n	Annualized New Wages (also Annualized Reemployment Wages).
h	Variable percentage based on reduced Hours Per Week h = (current hours per week/old hours per week).

Annualized Old Wages (o): Annualized wages are computed by multiplying the worker's hourly rate during the last full week of his/her employment by the number of hours the worker worked during the last full week of employment and multiplying that number by 52:

$$(\text{hourly rate} * \text{hours worked}) * 52$$

Annualized New Wages (n): Annualized wages at reemployment are defined similarly to annualized wages at separation, except that the hourly rate and hours worked must reflect those of the first full week of reemployment: (hourly rate * hours worked) * 52

Variable Percentage (h): This variable equals the quotient of the worker's current hours per week divided by the worker's hours per week at the time of separation.

H.7.1 Wage Calculation Formulas

Calculation for Full-Time Employment: Annualized Separation Wages minus Annualized Reemployment Wages multiplied by .50 equals 50 percent of the difference between the two periods of wages. Fifty percent of the difference between the two periods of wages divided by 12 equals the monthly RTAA wage subsidy.

$$\text{Monthly Benefit} = \frac{(o - n) * .50}{12}$$

Calculation for Part-time Employment: Annualized Separation Wages minus Annualized Reemployment Wages multiplied by h (the variable percentage based on reduced hours for part-time Annualized Reemployment Wages). Fifty percent of the difference between the two periods of wages divided by 12 equals the monthly RTAA wage subsidy.

$$\text{Monthly Benefit} = \frac{((o - n) * h * .50)}{12}$$

To determine the weekly annualized benefit amount change 12 to 52, or to determine the bi-weekly annualized benefit amount change 12 to 26.

H.7.2 Wage Calculation Examples

RTAA participant was working 40 hour per week with annualized separation wage of \$50,000 per year. The participant obtained full-time employment making \$20,000 per year.

$$o = \$50K \quad n = \$20K$$

Option 1—Full-Time Employment

$$\text{Monthly Benefit} = \frac{(\$50K - \$20K) * .50}{12} = \$1250 \text{ Per Month}$$

Option 2—Part-Time Employment

RTAA participant was working 40 hour per week with annualized

separation wage of \$50,000 per year. The participant obtained part-time

employment of 20 hours per week making \$20,000 per year.

$$o = \$50K \quad n = \$20K \quad h = (20/40)$$

$$\text{Monthly Benefit} = \frac{(\$50K - \$20K) * (20/40) * .50}{12} = \$625 \text{ Per Month}$$

If, as a result of the monthly verification exercise, the participant's hourly wage and/or hours are determined to have changed in such a way as to affect the RTAA wage supplement, the CSA will repeat the above calculation and adjust the RTAA payment accordingly.

H.8. Overpayments

As with ATAA, the determination of "annualized wages" is made prospectively. An individual meets the "earns not more than \$55,000 a year in wages from reemployment" requirement in Section 246 for a given month if the monthly determination of annualized wages is accurate and complete at the time it is made. Absent fraud, no overpayment determinations will be made for that month based on projections for the yearly annual wage that later changed based on information that was not available at the time that the monthly determination was made. Monthly payments derived from the annualized wage projection based on complete and accurate information at the time are valid payments that the individual was entitled to, and are not overpayments.

H.9. Other Program Benefits

Statutory Changes:

Section 1841 of the 2009 Amendments amends Section 246(a)(2)(B)–(C) of the 2002 Act to read:

(B) HEALTH INSURANCE.—A worker described in paragraph (3)(B) participating in the program established under paragraph (1) is eligible to receive, for the eligibility period under subparagraph (A) or (B) of paragraph

(4) (as the case may be), a credit for health insurance costs under section 35 of the Internal Revenue Code of 1986.

(C) TRAINING AND OTHER SERVICES.—A worker described in paragraph (3)(B) participating in the program established under paragraph (1) is eligible to receive training approved under section 236 and employment and case management services under section 235.

Section 1841 of the 2009 Amendments also amends Section 246(a)(7) of the 2002 Act to read:

(7) LIMITATION ON OTHER BENEFITS.—A worker described in paragraph (3)(B) may not receive a trade readjustment allowance under part I of subchapter B pursuant to the certification described in paragraph (3)(A) during any week for which the worker receives a payment described in paragraph (2)(A).

Administration: An individual receiving RTAA may also receive TAA training, employment and case management services, HCTC, and job search and relocation allowances under certain conditions.

As with ATAA, once a worker elects RTAA, the worker cannot return to TRA. Under the 2009 Act, a means is provided for a worker to move from TRA to RTAA, by authorizing a method of computing an available balance when that move occurs, but does not provide a means for a worker to move from RTAA back to TRA.

With respect to HCTC, the CSA must report RTAA recipients (workers who are receiving RTAA) to the Internal Revenue Service (IRS) in the manner described in UIPL No. 24–03, dated April 14, 2003 and UIPL No. 21–09, dated April 3, 2009.

H.10. Documentation of Benefit History

The Department requires that each CSA maintain a manual or automated benefit history for each RTAA recipient for a period of no less than three years for audit purposes. The three years begins from the most recent determination of eligibility, benefits paid or appeal decisions—whichever is later. The information required in that benefit history is the same as that required for ATAA.

I. State Operations

I.1. Alien Verification

Statutory Change: Section 1853 of the 2009 Amendments amends Section 239 of the 2002 Act by adding subsection (k), which reads:

(k) VERIFICATION OF ELIGIBILITY FOR PROGRAM BENEFITS.—

(1) IN GENERAL.—An agreement under this subchapter shall provide that the State shall periodically redetermine that a worker receiving benefits under this subchapter who is not a citizen or national of the United States remains in a satisfactory immigration status. Once satisfactory immigration status has been initially verified through the immigration status verification system described in section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d)) for purposes of establishing a worker's eligibility for unemployment compensation, the State shall reverify the worker's immigration status if the documentation provided during initial verification will expire during the period in which that worker is potentially eligible to receive benefits under this subchapter. The State shall conduct such redetermination in a timely manner, utilizing the immigration status verification system described in

section 1137(d) of the Social Security Act (42 U.S.C. 1320b-7(d)).

(2) PROCEDURES.—The Secretary shall establish procedures to ensure the uniform application by the States of the requirements of this subsection.

Administration: All states are required, under section 1137(d) of the Social Security Act (42 U.S.C. 1320b-7(d)), to initially verify the immigration status of self-reporting aliens who apply for UI through the Systematic Alien Verification for Entitlement (SAVE) program maintained by the U.S. Customs and Immigration Service (USCIS, formerly Immigration and Naturalization Service). Under section 1137(d)(2), an alien is required to provide an alien registration document with an alien registration number, or provide “such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.” If there is a match that verifies the individual’s documentation, SAVE returns information that the alien is in satisfactory immigration status, and provides an expiration date, if there is one, for that status.

To meet this requirement, the State must have a system for alerting the staff responsible for processing applications to the expiration of satisfactory immigration status during the time the individual is potentially eligible for benefits. This may be done by modifying case management systems for TAA recipients to track the immigration status of a worker receiving TAA who is not a citizen or national of the United States. It is important to note that this requirement applies to all benefits under the TAA program, and not just TRA benefits.

Section 239(k) of the 2009 Act requires that States re-verify an individual’s immigration status if the documentation provided by the individual during initial verification will expire during the period in which that worker is potentially eligible to receive Trade benefits. The re-verification of satisfactory immigration status must be conducted in a timely manner, and in the same manner used for initial verification.

To the extent States have in place, and use, a system for alerting the staff responsible for processing applications to the expiration of satisfactory immigration status during the time the individual is potentially eligible for benefits, no further action is required unless the alien’s satisfactory immigration status expires. Additionally, one of the six conditions for approval of training is that there be “a reasonable expectation of

employment following completion of * * * training.” Where a worker is not in a satisfactory immigration status, there is no such reasonable expectation. Therefore, a training program is not approvable if the individual is not eligible at the time of application for work at least one day following completion of training.

I.2. Control Measures

Statutory Change: Section 1852 of the 2009 Amendments amends Section 239 of the 2002 Act to add subsection (i), which reads:

(i) CONTROL MEASURES.—

(1) IN GENERAL.—The Secretary shall require each cooperating State and cooperating State agency to implement effective control measures and to effectively oversee the operation and administration of the trade adjustment assistance program under this chapter, including by means of monitoring the operation of control measures to improve the accuracy and timeliness of the data being collected and reported.

(2) DEFINITION.—For purposes of paragraph (1), the term ‘control measures’ means measures that—

(A) Are internal to a system used by a State to collect data; and

(B) Are designed to ensure the accuracy and verifiability of such data.

Administration: This new section requires CSAs to implement control measures to effectively oversee the operation and administration of the TAA program and to improve the timeliness of reported data, as well as verifying the accuracy of such data. In addition, CSAs must monitor on a regular basis the administration of the TAA program and its various components, including TRA, training services, RTAA, job search and relocation, and employment and case management services.

To comply with this new provision, the CSA must adopt a formal monitoring program that reviews a sample of worker files to ensure effective and efficient operation and administration of the program. The monitoring program must be designed to identify best practices, process deficiencies, and training needs. Case files reviewed must include files for workers certified under both the 2002 amendments and the 2009 amendments. A minimum quarterly random sample of 20 cases should be audited and must include at least two certifications. The four quarterly samples within a calendar year should also cover at least four different areas of the State administering the program. If circumstances preclude a CSA from meeting these criteria, the CSA should contact the ETA Regional Office to design a monitoring program that better suits the TAA program in that State, and

is sufficient to ensure the accuracy and verifiability of such data.

I.3. Data Reporting

Statutory Change: Section 1852 of the 2009 Amendments amends Section 239 of the Act to add subsection (j), which reads:

(j) DATA REPORTING.—

(1) IN GENERAL.—Any agreement entered into under this section shall require the cooperating State or cooperating State agency to report to the Secretary on a quarterly basis comprehensive performance accountability data, to consist of—

(A) The core indicators of performance described in paragraph (2)(A);

(B) The additional indicators of performance described in paragraph (2)(B), if any; and

(C) A description of efforts made to improve outcomes for workers under the trade adjustment assistance program.

(2) CORE INDICATORS DESCRIBED.—

(A) IN GENERAL.—The core indicators of performance described in this paragraph are—

(i) The percentage of workers receiving benefits under this chapter who are employed during the second calendar quarter following the calendar quarter in which the workers cease receiving such benefits;

(ii) The percentage of such workers who are employed in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits; and

(iii) The earnings of such workers in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits.

(B) ADDITIONAL INDICATORS.—The Secretary and a cooperating State or cooperating State agency may agree upon additional indicators of performance for the trade adjustment assistance program under this chapter, as appropriate.

(3) STANDARDS WITH RESPECT TO RELIABILITY OF DATA.—In preparing the quarterly report required by paragraph (1), each cooperating State or cooperating State agency shall establish procedures that are consistent with guidelines to be issued by the Secretary to ensure that the data reported are valid and reliable.

Administration: This new section establishes statutory core indicators and outcome reporting requirements for TAA participants, including an Entered Employment measure, two Retained Employment measures and an Average Earnings measure. Outcome data is required on a quarterly basis as part of the overall effort to improve the TAA program, its performance and worker outcomes. The Secretary and States may agree upon additional measures, although no new measures are planned at this time. States also must submit a description of efforts made to improve outcomes for workers.

Some of the outcome data required by Section 239(j) of the 2009 Act is

collected on current reports while other data may be new or may be collected in different formats than those currently in place. Although the new reporting requirements under Section 239(j) are similar to the Common Measures currently reported on the Trade Act Participant Report (TAPR) (OMB 1205-0392). Section 239(j) requires CSAs to report additional information beyond that reported on the TAPR.

Therefore, on or before August 17, 2009, the Department expects to transmit new reporting forms to the States and issue detailed guidance on the new reporting requirements imposed on States under the 2009 Act. CSAs are required to continue to submit the TAPR (OMB Control No. 1205-0932) in accordance with TEGL No. 11-00, the ETA-563 Quarterly Participant Report (OMB Control No. 1205-0459) in accordance with TEGL 23-06, and the Alternative Trade Adjustment Assistance Activities Report (ATAAAR) (OMB Control No. 1205-0459) in accordance with TEGL No. 01-06, until the Department has issued superseding forms and guidance.

I.4. Program Reporting Requirements

Statutory Change: Section 1854 of the 2009 Amendments amends the Act by adding Section 249B:

SEC. 249B. COLLECTION AND PUBLICATION OF DATA AND REPORTS; INFORMATION TO WORKERS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, the Secretary shall implement a system to collect and report the data described in subsection (b), as well as any other information that the Secretary considers appropriate to effectively carry out this chapter.

(b) DATA TO BE INCLUDED.—The system required under subsection (a) shall include collection of and reporting on the following data for each fiscal year:

(1) DATA ON PETITIONS FILED, CERTIFIED, AND DENIED.—

(A) The number of petitions filed, certified, and denied under this chapter.

(B) The number of workers covered by petitions filed, certified, and denied.

(C) The number of petitions, classified by—

(i) The basis for certification, including increased imports, shifts in production, and other bases of eligibility; and

(ii) Congressional district of the United States.

(D) The average time for processing such petitions.

(2) DATA ON BENEFITS RECEIVED.—

(A) The number of workers receiving benefits under this chapter.

(B) The number of workers receiving each type of benefit, including training, trade readjustment allowances, employment and case management services, and relocation and job search allowances, and, to the extent feasible, credits for health insurance costs

under section 35 of the Internal Revenue Code of 1986.

(C) The average time during which such workers receive each such type of benefit.

(3) DATA ON TRAINING.—

(A) The number of workers enrolled in training approved under section 236, classified by major types of training, including classroom training, training through distance learning, on-the-job training, and customized training.

(B) The number of workers enrolled in full-time training and part-time training.

(C) The average duration of training.

(D) The number of training waivers granted under section 231(c), classified by type of waiver.

(E) The number of workers who complete training and the duration of such training.

(F) The number of workers who do not complete training.

(4) DATA ON OUTCOMES.—

(A) A summary of the quarterly reports required under section 239(j).

(B) The sectors in which workers are employed after receiving benefits under this chapter.

(5) DATA ON RAPID RESPONSE ACTIVITIES.—Whether rapid response activities were provided with respect to each petition filed under section 221.

(c) CLASSIFICATION OF DATA.—To the extent possible, in collecting and reporting the data described in subsection.

(b), The Secretary shall classify the data by industry, State, and national totals.

(d) REPORT.—Not later than December 15 of each year, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that includes—

(1) A summary of the information collected under this section for the preceding fiscal year;

(2) Information on the distribution of funds to each State pursuant to section 236(a)(2); and

(3) Any recommendations of the Secretary with respect to changes in eligibility requirements, benefits, or training funding under this chapter based on the data collected under this section.

(e) AVAILABILITY OF DATA.—

(1) IN GENERAL.—The Secretary shall make available to the public, by publishing on the website of the Department of Labor and by other means, as appropriate—

(A) The report required under subsection (d);

(B) The data collected under this section, in a searchable format; and

(C) A list of cooperating States and cooperating State agencies that failed to submit to the data required by this section to the Secretary in a timely manner.

(2) UPDATES.—The Secretary shall update the data under paragraph (1) on a quarterly basis.

Administration: The new reporting requirements for data required under Section 249B are effective 180 days after the date of the Act. Since quarterly data are required, and reporting a split quarter would not be consistent with legislative direction, new reporting

requirements will be in effect for the Quarter beginning October 1, 2009 (the first quarter of fiscal year 2010).

The new data elements required under Section 249B, as well as existing data elements collected on current reports, may be required to be collected in different formats than those currently in place in order to accommodate new reporting requirements. Therefore, on or before August 17, 2009, the Department expects to transmit new reporting forms to the States and issue detailed guidance on the new reporting requirements imposed on States under the 2009 Act. States are required to continue to submit the TAPR (OMB Control No. 1205-0932) in accordance with TEGL No. 11-00, the ETA-563 Quarterly Participant Report (OMB Control No. 1205-0459) in accordance with TEGL No. 23-06, and the ATAAAR (OMB Control No. 1205-0459) in accordance with TEGL No. 01-06, until the Department issues superseding forms and guidance.

J. Health Coverage Tax Credit

Statutory Change: Sections 1899A and 1899B of the 2009 Amendments, relating to the HCTC, amended Sections 35(a) and 7527(b) of the Internal Revenue Code of 1986 by adding a new section, Section 7527(e), to provide for 80 percent reimbursement of health insurance costs during the period from March 2009 through December 2010, to provide for certain retroactive payments, and also to reduce the amount of any such payment by the amount of any National Emergency Grant (NEG) payments to the taxpayer. Section 1899C of the 2009 Amendments amended the definition of an “eligible TAA recipient” to provide the HCTC during breaks in approved training and where, under defined circumstances, a worker is not in approved training. Section 1899K of the 2009 Act extends the use of NEGs under Section 173(f) of the WIA to cover HCTC advance payments, outreach, and infrastructure changes.

Administration: The Internal Revenue Service administers the HCTC, which helps “eligible TAA recipients” and “eligible alternative TAA recipients” and other eligible individuals and their families pay their health insurance premiums. “Eligible alternative TAA recipients” includes ATAA recipients and RTAA recipients.

The new definition of an “eligible TAA recipient” as amended continues to be defined as an individual who receives Trade Readjustment Allowances (TRA) for any day of a month (and the next subsequent month) or who will receive TRA but for the fact that s/he has not exhausted

unemployment compensation (UC) entitlement, and is potentially eligible for HCTC for that month. Under the 2009 Act, an eligible TAA recipient also includes:

An individual 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,

Who is receiving UC for any day of such month and would be eligible to receive TRA (except that s/he has not exhausted UC) for such month, without regard to the enrollment in training requirements.

These amendments have the effect of expanding HCTC eligibility, under some conditions, to an individual who is in

an extended break in training, or who is still receiving UI benefits under regular or extended programs even though they are not yet enrolled in training. Accordingly, CSAs will need to ensure that they review each case individually before determining HCTC eligibility for trade affected workers.

CSAs should also be aware that these amendments provide, through December, 2010, for the continuation of HCTC to certain family members of eligible recipients after eligibility would have ended due to receipt of Medicare, death, or divorce of the principle recipient. The CSA has no role in the administration of this extension, which is the responsibility of the IRS, however the CSA needs to be aware of this

provision. This expanded eligibility is available for up to 24 additional months and permits eligible family members to continue to claim the HCTC credit after eligibility would otherwise have expired.

UIPL No. 21-09 provides guidance on applying the expanded definition of "eligible TAA recipient." Additional information on the HCTC program is available on the IRS Web site at: <http://www.irs.gov>.

Signed: at Washington, DC, this 25th day of September 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

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