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| EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210 | CLASSIFICATION TAA |
| | CORRESPONDENCE SYMBOL OTAA |
| | DATE September 4, 2015 |

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 5-15

TO: STATE WORKFORCE AGENCIES
 STATE WORKFORCE LIAISONS
 AFFILIATE AMERICAN JOB CENTER MANAGERS
 COMPREHENSIVE AMERICAN JOB CENTER MANAGERS
 STATE WORKFORCE ADMINISTRATORS
 STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
 STATE LABOR COMMISSIONERS
 RAPID RESPONSE COORDINATORS
 TRADE ADJUSTMENT ASSISTANCE LEADS

FROM: PORTIA WU /s/
 Assistant Secretary

SUBJECT: Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015)

1. **Purpose.** To assist the State Workforce Agencies designated by the Governor as “cooperating state agencies” (CSAs) in implementing the Trade Adjustment Assistance (TAA) Reauthorization Act of 2015 (TAARA 2015).

2. **References.** See Attachment C.

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

TAA Statutes and Program Definitions:

1. *2002 Act* means the Trade Act of 1974, P. L. No. 93-618, as amended through 2002, including the Trade Adjustment Assistance Reform Act of 2002, Division A, title I, subtitle A of the Trade Act of 2002, P.L. No. 107-210 (TAARA) amendments.
 - i. *2002 Program* refers to the Trade Adjustment Assistance for Workers program, chapter 2 of title II of the Trade Act of 1974, under the 2002 Act.
2. *2009 Act* means the Trade Act of 1974, as amended through 2009, including the Trade and Globalization Adjustment Assistance Act of 2009, Division B, title I, subtitle I of the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (TGAAA) amendments.

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| RESCISSIONS None | EXPIRATION DATE: Continuing |
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- i. *2009 Program* refers to the Trade Adjustment Assistance for Workers program, chapter 2 of title II of the Trade Act of 1974, under the 2009 Act.
- 3. *2011 Act* means the Trade Act of 1974, as amended through 2011, including the Trade Adjustment Assistance Extension Act of 2011, Title II of P. L. No. 112-40 (TAAEA) amendments.
 - i. *2011 Program* refers to the Trade Adjustment Assistance for Workers program, chapter 2 of title II of the Trade Act of 1974, under the 2011 Act.
- 4. *2015 Act* means the Trade Act of 1974, as amended, including the Trade Adjustment Assistance Reauthorization Act of 2015, Title IV of the Trade Preferences Act of 2015, P.L. No. 114-27 (TAARA 2015) amendments.
 - i. *2015 Program* refers to the Trade Adjustment Assistance for Workers program, chapter 2 of title II of the Trade Act of 1974, under the 2015 Act.
- 5. *Reversion 2014* refers to the Trade Adjustment Assistance for Workers program, chapter 2 of title II of the Trade Act of 1974 as administered under section 233 *Sunset Provisions* of the 2011 Act.
- 6. *TAA Program* refers to the Trade Adjustment Assistance for Workers program as operated under chapter 2 of title II of the Trade Act of 1974 generally (see terms *2002 Program, 2009 Program, 2011 Program, Reversion 2014, and 2015 Program*).

Other TAA Definitions:

- 1. *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.
- 2. *CSA* means Cooperating State Agency, as described in Section 239(a) of the 2015 Act.
- 3. *Department* means the U.S. Department of Labor.
- 4. *HCTC* means Health Coverage Tax Credit (Section 35, Internal Revenue Code (I.R.C.) of 1986) (26 U.S.C. 35), as amended by Section 407 of the TAARA of 2015.
- 5. *OTAA* means the U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, as described in Section 249A of the 2015 Act.
- 6. *RTAA* means Reemployment Trade Adjustment Assistance, under Section 246 of the 2009 Act, the 2011 Act, and the 2015 Act.
- 7. *Secretary* means the Secretary of Labor.
- 8. *TRA* means Trade Readjustment Allowances.
- 9. *WIOA* means the Workforce Innovation and Opportunity Act, P.L. 113-128 (29 U.S.C. 3101 et seq.).

4. Background. The TAA Program was first established at the Department of Labor by the Trade Act of 1974, and has been amended several times. Individual workers who are members of the certified worker group apply for benefits and services at a one-stop center(s) (branded as American Job Centers). Individual workers who meet the qualifying criteria may receive: job training; income support in the form of Trade Readjustment Allowances (TRA); job search and relocation allowances; Health

Coverage Tax Credit (HCTC) (as determined by the Internal Revenue Service (IRS)); and for workers age 50 and older, a wage supplement in the form of RTAA. In addition, all workers covered by a certification are eligible for employment and case management services including Basic and Individualized Career Services either through the TAA Program or through and in coordination with WIOA and Wagner Peyser as discussed in WIOA TEGL No. 3-15.

The TAARA 2015, title IV of the Trade Preferences Extension Act of 2015 (Public Law 114-27), was signed into law by President Barack Obama on June 29, 2015, and both amends and reauthorizes the TAA Program. The TAARA 2015 (see Attachment B) restores the worker group eligibility and benefits established by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA). The TAARA 2015 also authorizes the operation of the 2015 Program and continuation of the 2002 Program, the 2009 Program, and the 2011 Program through June 30, 2021; provides a 90-day transition period for Reversion 2014 Program participants; expands coverage of certifications of petitions filed since January 1, 2014 for 90 days; requires reconsideration of negative determinations on petitions filed since that date and before the date of enactment under 2015 Act certification requirements; and reauthorizes the HCTC program benefit for eligible TAA participants. Additionally, new requirements are added by the TAARA 2015 to align performance reporting for the TAA Program with the requirements of the WIOA.

The Department has established a new petition number series beginning with TA-W-90,000, for petitions filed on and after the enactment date of the TAARA 2015. All petitions numbered TA-W-90,000 and above will be served under the 2015 Program. States will continue to operate the 2002 Program, the 2009 Program, and the 2011 Program, in accordance with previously issued guidance. The Reversion 2014 Program will continue to operate through September 27, 2015, in accordance with the guidance in Training and Employment Guidance Letter (TEGL) No. 07-13, and then workers in that program (covered by certifications numbered TA-W-85,000-89,999) will transition to the 2015 Program on September 28, 2015, as explained in Section A of Attachment A to this TEGL.

Previously issued guidance for the 2002 Program, the 2009 Program, and the 2011 Program remains in effect for participants in those programs, and apply as follows:

1. Workers covered by certifications of petitions numbered TA-W-69,999 and below (2002 Program) are addressed in TEGL No. 11-02 and its Changes 1, 2, and 3; and TEGL No. 8-11.
2. Workers covered by certifications of petitions numbered TA-W-70,000-79,999 (2009 Program) are addressed in TEGL No. 22-08 and its Change 1; and TEGL No. 8-11.
3. Workers covered by certifications of petitions numbered TA-W-80,000-89,999 (2011 Program or 2002 Program) also are addressed in TEGL No. 10-11 and its Change 1; and TEGL No. 8-11. Note: The TAAEA included a provision allowing workers who were receiving benefits under the 2002 Program under

certifications issued between February 12, 2011, and October 21, 2011, to make a one-time choice between December 20, 2011, and March 19, 2012, to either continue being served under the 2002 Program or to move to the 2011 Program. Workers who did not choose to change to the 2011 Program continue to be eligible to participate in only the 2002 Program.

4. Workers covered by certifications of petitions numbered TA-W-81,000-84,999 (2011 Program) are addressed in TEGL No. 10-11 and its Changes 1 and 2; and TEGL No. 8-11.

In addition, Section H.1., H.3.2., and H.3.3., of these Operating Instructions, explain new interpretations of statutory requirements for individual RTAA eligibility determinations that are in the best interests of adversely affected workers covered under the 2015 Program, and also apply to workers in the 2009 Program and the 2011 Program. The CSAs must apply these interpretations in determining the following aspects of RTAA eligibility: (1) the determination of whether the worker has become employed by a “firm” that is different from the “firm” from which the worker was separated; (2) the RTAA eligibility period for an adversely affected worker who is not yet age 50 at the time of reemployment; and (3) the eligibility of a worker in full-time employment and enrolled in TAA-approved training when applying for RTAA.

The 2015 Act contains the same certification of group eligibility provisions as the 2011 Act, which provides for more expansive TAA coverage than available under either the 2002 Program or the Reversion 2014 Program, including coverage for workers and firms in the service sector. The 2015 Act also contains the same individual benefit eligibility provisions as the 2011 Act, which improves workers’ opportunities for training and reemployment.

Under the agreement executed by the Secretary of Labor and the State Governors in 2009, in accordance with Section 239 of the 2009 Act, the CSA acts as the agent of the Secretary to notify certified workers of potential TAA benefits and services, make eligibility determinations for individuals, deliver benefits and services funded by the program, coordinate benefits and services as a required partner in the one-stop delivery system established under WIA, which continues under WIOA, and report required program data to the Department. The Department will provide separate information on executing a new agreement with each State Governor.

The following is a summary of the Operating Instructions (Attachment A):

Transition from the Reversion 2014 Program to the 2015 Program

- The benefits and services available to workers covered by certifications of petitions filed before January 1, 2014 (2002 Program, 2009 Program, and 2011 Program) are unchanged, except for new interpretations of applicable law as summarized below and described in the 2015 Program Operating Instructions.
- A determination on a petition filed before or under investigation on June 29, 2015, will be automatically issued based on the group eligibility provisions of

the 2015 Act. No action is required on the part of the petitioner.

- The Department has automatically reopened investigations of all petitions filed after January 1, 2014, and on or before June 29, 2015, that resulted in a denial of certification before June 29, 2015. No action is required on the part of the petitioner.
- CSAs are required to provide notice of program benefits to all workers covered under certifications of petitions numbered TA-W-85,000-89,999 that includes:
 - Information about 2015 Program benefits and services.
 - Notification of and explanation about the transition from the Reversion 2014 Program to the 2015 Program for these TAA participants, which will occur on September 28, 2015 (90 days after enactment of TAARA 2015).
 - Information about adversely affected incumbent worker benefits (sent to an expanded list of workers who are threatened with separation but have not been totally or partially separated from employment and therefore would not have been on prior employer lists of certifications under the Reversion 2014 program).
 - Notification of and information about the RTAA benefit that will be available to this cohort of TAA participants, for workers aged 50 and older, beginning on September 28, 2015.
- In addition, CSAs must review all determinations denying individual eligibility for TRA and ATAA and issue new determinations based on the 2015 Program requirements.

Group Eligibility Coverage

- Workers in firms that produce articles or supply services based on an increase in imports of articles or services;
- Workers in firms that have shifted production to any foreign country;
- Workers in firms that produce component parts or supply services where there are increased imports of the finished article;
- Workers in firms that are downstream producers or supply testing, packaging, maintenance, and transportation services to companies with TAA-certified workers; and
- Workers whose firm is identified in specific types of International Trade Commission affirmative “injury” or “market disruption” determinations.

Income Support (TRA)

- Deadline for individuals to enroll in training as a condition for receiving TRA is 26 weeks from the later of the worker’s most recent total qualifying separation, or 26 weeks from the issuance of the certification;
- Waivers of the training enrollment requirement for Basic TRA eligibility are available for reasons of: health, enrollment unavailable, training not available before expiration of the training enrollment deadline;
- Payment of 65 weeks of Additional TRA over a period of 78 weeks, allowing for breaks in training and temporary periods of employment where additional TRA is not paid;

- Payment of up to 13 consecutive weeks of Completion TRA if the worker must undertake additional weeks of education to complete a program of TAA training and earn a degree or industry-recognized credential;
- Federal Good Cause provision for waiving certain time limits for individual eligibility for TRA and other benefits;
- Eligible participants may 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);
- No application for training required to be filed within 210 days of certification or separation as a condition for the receipt of Additional TRA;
- Special rule for returning members of the Armed Forces and National Guard to allow them to receive TAA in the same manner and to the same extent as if the worker had not served the period of duty;
- Special rule for calculating the TRA eligibility period to exclude any period during which a judicial or administrative appeal of a denial of certification was pending; and
- Special rule for extending the TRA eligibility period for justifiable cause.

Training

- Statutory cap on funds that may be allocated to the States for Training and Other Activities is at the level of \$450 million per year;
- TAA-funded training is allowed for adversely affected incumbent workers (workers who are covered by a certification before their separation from employment);
- Part-time training can be approved, but without TRA;
- Approval of Registered Apprenticeships and On-the-Job training encouraged; and
- Achievement of training benchmarks required in order to retain eligibility for Completion TRA.

Job Search and Relocation Allowances

- The percentage of job search expenses that may be paid on behalf of a qualified participant is 90 percent of the total expenses, but capped at \$1,250; and
- The percentage of relocation expenses that may be paid on behalf of a qualified participant is 90 percent of the total expenses, plus a lump sum payment of up to \$1,250.
- States have a one-time option to decide whether to offer job search and relocation allowances as a benefit to 2015 Program participants and must pay for such allowances from allocations of fiscal year funds to fund these allowances, as well as training, employment and case management services, and related state administrative costs.

Employment and Case Management Services

- Workers have an entitlement to employment and case management services, and funds appropriated for TAA are authorized to be used for that purpose.

Older Worker Wage Supplement (RTAA)

- Available without a separate group certification of eligibility for this benefit;
- No specific deadline for a worker to find reemployment after layoff from adversely affected employment as an eligibility requirement;
- Workers who choose and are eligible to receive RTAA may also receive regular TAA benefits and services involving: employment and case management services, training, TRA (with limitations), HCTC, and relocation and job search allowances; and
- Workers may qualify for RTAA while working full-time or part-time if they are also enrolled full-time in TAA approved training.

Performance and Reporting

- TAA Performance Measures now will be aligned with the WIOA performance reporting requirements; separate guidance will be issued for implementation.

Health Coverage Tax Credit (HCTC)

- Separate guidance from the Department will be issued on HCTC in accordance with guidelines issued by the IRS.

5. **Operating Instructions.** The Operating Instructions contained in Attachment A address the state operations of the TAA program after the enactment of TAARA 2015. The Operating Instructions are issued to the States and the CSAs as guidance provided by the Department in its role as the principal in the TAA program, as described in the current Agreement between the Secretary of Labor and the Governor of each State, or a revised agreement to be entered into at a later date. 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 the Department.

For matters that are not addressed by these operating instructions, CSAs must continue to comply with all program letters issued by the Department that are applicable to the TAA Program and applicable regulations codified at 20 CFR 617 and 618 and 29 CFR 90. Guidance letters (Directives) and these regulations (Regulations) are located on the website here, under “Law”:

<http://www.doleta.gov/tradeact/>.

The 2015 Act takes effect immediately for petitions filed on or after June 29, 2015, (date of enactment). This effective date also applies to the TAARA 2015 provision requiring the Department to reopen investigations of petitions filed from January 1, 2014 through June 29, 2015, for consideration under the 2015 Act certification requirements. Petitions filed on and after June 29, 2015, as well as determinations issued under those petitions, will be identified by a numbering sequence starting at TA-W-90,000.

6. **Action Requested.** CSAs must make every effort to notify workers that a petition should be filed as soon as possible if they believe that a worker group may be eligible for TAA certification under the 2015 Act criteria. In general, certifications cover workers separated from employment up to one year before the date of the petition. This date is known as the “impact date” of the certification. The 2015 Act provides that all certifications of petitions filed within 90 days after the date of enactment of the 2015 Amendments, which is **11:59 PM EST September 27, 2015**, include workers separated on or after January 1, 2014, instead of the one-year impact date that applies to certifications of all other petitions. When a petition dated more than 90 days after the date of enactment (September 28, 2015) is certified, the one-year impact date will apply, and the certification will no longer cover workers separated more than one year before the petition date.

CSAs are required to implement the transition of workers from the Reversion 2014 Program to the 2015 Program on September 28, 2015, as set forth in these Operating Instructions (Attachment A, Section A).

CSAs are required to implement the 2015 Program, as set forth in these Operating Instructions (Attachment A), in addition to Sections H.1, H.3.2., and H.3.3., of these Operating Instructions that apply to determinations on RTAA applications.

Additionally, CSAs will continue to administer the 2002 Program, the 2009 Program, and the 2011 Program, in accordance with their associated Operating Instructions until all of those workers have exited the program, or in accordance with future guidance.

CSAs will inform all appropriate staff of the contents of these instructions.

7. **Inquiries.** CSAs should direct all inquiries to the appropriate ETA Regional office.
8. **Attachments.**
- **Attachment A:** Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Preferences Extension Act of 2015
 - **Attachment B:** Trade Act of 1974, as amended
 - **Attachment C:** References