

**Operating Instructions for Implementing the Trade Adjustment Assistance  
Reauthorization Act of 2015 (TAARA 2015)**

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## INTRODUCTION

These Operating Instructions implement TAARA 2015, and specifically address Trade Adjustment Assistance (TAA) benefits and services for adversely affected workers covered under TAA certifications resulting from petitions filed January 1, 2014, through June 28, 2015, and petitions filed on and after June 29, 2015. Cooperating State Agencies (CSAs) must continue to follow Training and Employment Guidance Letters (TEGLs) cited below and other such program guidance letters issued by the Department of Labor (Department) applicable to the TAA benefits and assistance for adversely affected workers. These Operating Instructions follow the format of the 2009 Operating Instructions (TEGL No. 22-08 and its Change 1), and include changes made by the 2011 Operating Instructions (TEGL No. 10-11 and its Changes 1 and 2).

The previously issued guidance for the 2002 Program, the 2009 Program, and the 2011 Program remains in effect for participants in those programs.

## 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.
  - 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 TAAEA.
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, and as administered under the 2002 Program and the Reversion 2014 Program.
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 the versions of 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.).

## REAUTHORIZATION AND TERMINATION

**Statutory Change:** Sections 402, 403, 405, and 406 of the TAARA 2015, as shown in Attachment C of these Operating Instructions, contain provisions for effective dates for the TAARA 2015 amendments, the termination dates for the 2015 Program, the applicability of the 2015 Program to petitions filed and benefits and services for workers covered under petitions filed and certified before enactment of the TAARA 2015, and the sunset provisions for the 2015 Program and the operation of the TAA Program beginning on July 1, 2021.

**Administration:** Section 402(a) of the TAARA 2015, effective on the date of the enactment (June 29, 2015), repeals the “snapback” provisions of Section 233 of the TAAEA. Section 402(b) makes the 2015 Act apply to all petitions filed on and after that date. Petitions filed on and after June 29, 2015, are being assigned numbers in the series beginning TA-W-90,000. Petitions in this series will be certified under the requirements of the 2015 Act and workers covered under those petitions will be individually eligible to apply for benefits and services under the 2015 Program.

Section 405 of the TAARA 2015 provides for the transition of workers certified under petitions filed on or after January 1, 2014, and before the date of enactment, from the Reversion 2014 Program to the 2015 Program beginning 90 days after the date of enactment. Since the TAARA 2015 was signed into law on June 29, 2015, the 90-day period will end on 11:59 P.M. EST, September 27, 2015. This means that, beginning on September 28, 2015, the Reversion 2014 Program will end and Reversion 2014 Program participants will be served under the 2015 Program. Reversion 2014 Program participants receiving benefits and services on September 27, 2015, will continue to receive those benefits after that date so long as they continue to meet the requirements for the benefit, as explained in Section A, below. All benefits received before September 28, 2015, by a worker under the Reversion 2014 Program (covered by a certification of a petition in the series TA-W-85,000 -89,999) shall be included in any determination of the maximum benefits for which the worker is eligible under the 2015 Program beginning on September 28, 2015. The 2002 Program, 2009 Program, and 2011 Program will continue, and a worker covered by a certification issued in response to a petition filed before January 1, 2014, will continue to be served under one of these programs based on the petition number associated with that certification.

Section 403 amends Section 245 of the 2011 Act to extend the authorization of appropriations through June 30, 2021. Section 403 also amends Section 236(a)(2)(A) of the 2011 Act to revise both the cap on the amount of funds

available for training, employment and case management services, job search allowances, relocation allowances, and related state administration to \$450 million, and the period during which those funds may be appropriated to, “each of fiscal years 2015 through 2021.” This Section also amends Section 285 and Section 246 of the 2011 Act to extend the termination/phase-out date of the TAA Program and RTAA to June 30, 2021. Under these provisions for termination/phase-out, workers covered by certifications based on petitions filed on or before June 30, 2021, will be eligible to continue to receive 2015 Program benefits and services so long as they are otherwise eligible for them. The Department will issue additional instructions if action to implement these provisions becomes necessary.

Section 406 contains sunset provisions for the TAARA 2015, beginning on July 1, 2021, when the TAA Program is authorized to operate the Reversion 2014 Program for one year. The Department will issue additional instructions if action to implement these provisions becomes necessary.

#### **A. TRANSITION FROM THE REVERSION 2014 PROGRAM TO THE 2015 AMENDMENTS**

Section A of these Operating Instructions describe how Section 405 of the TAARA 2015 addresses three distinct cohorts of workers: workers covered by certifications of petitions issued before January 1, 2014, numbered TA-W-84,999 and below; workers covered by certifications of petitions, denials of petitions, or pending petitions filed on and after January 1, 2014, and before June 29, 2015, numbered TA-W-85,000-89,999; and workers covered by certifications of petitions issued on or after June 30, 2015, numbered TA-W-90,000 and above.

##### **A.1. Petitions filed before January 1, 2014**

**Statute:** Section 405(a)(2) of the 2015 Act reads:

*(2) PETITIONS FILED BEFORE JANUARY 1, 2014. – A worker certified as eligible to apply for trade adjustment assistance pursuant to a petition filed under Section 221 of the Trade Act of 1974 on or before December 31, 2013, shall continue to be eligible to apply for and receive benefits under the provisions of chapter 2 of title II of such Act, as in effect on December 31, 2013;*

**Administration:** The TAARA 2015 does not change the benefits and services available to workers covered by certifications of petitions filed before January 1, 2014, which the Department interpreted in TEGl No. 7-13 to mean petitions received on or before 11:59 PM EST (Tuesday) December 31, 2013. These

workers are and will continue to be served as described below:

- I. Workers covered by petitions filed on or before May 17, 2009, identified by certification numbers TA-W-69,999 and below. These workers are subject to the provisions of the 2002 Act, as implemented in TEGL No. 11-02 and its Changes, 1, 2, and 3; TEGL No. 2-03, and its Changes 1 and 2; as well as applicable regulations codified at 20 CFR 617 and 618, and 29 CFR 90.
- II. Workers covered by petitions filed on or after May 18, 2009, and on or before 11:59 PM on February 14, 2011, are identified by certification numbers TA-W-70,000-79,999. These workers are subject to the provisions of the 2009 Act as implemented in TEGL No. 22-08 and its Change 1; as well as applicable regulations codified at 20 CFR 617 and 618, and 29 CFR 90.
- III. Workers covered by petitions filed on or after February 15, 2011, and on or before 11:59 PM on October 20, 2011, are identified by certification numbers TA-W-80,000-80,999. These workers are subject either to the provisions of the 2002 Act indicated in (I) above, or the 2011 Act as provided in (IV) below through a one-time election subject to the statutory conditions explained in TEGL No. 10-11 and its Changes 1 and 2.
- IV. Workers covered by petitions filed on or after October 21, 2011, and on or before 11:59 PM on December 31, 2013, are identified by certification numbers TA-W-81,000-84,999. These workers are subject to the provisions of the 2011 Act as implemented in TEGL No. 10-11, and its Changes 1, and 2; as well as applicable regulations at 20 CFR 617 and 618 and 29 CFR 90.

## **A.2. Petitions filed on and after January 1, 2014, and before June 29, 2015**

Several provisions of the TAARA 2015 address workers covered by certifications of petitions filed on and after January 1, 2014, and before the Enactment Date, June 29, 2015. These workers are covered by petitions with numbers ranging from TA-W-85,000 through TA-W-89,999.

### **A.2.1. Certification Requirements for Petitions under Investigation on June 29, 2015**

**Statute:** Section 405(a)(1)(A) of the 2015 Act reads:

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

*(i) CRITERIA IF A DETERMINATION HAS NOT BEEN MADE. – If,*

*as of the date of the enactment of this Act, the Secretary of Labor has not made a determination with respect to whether to certify a group of workers as eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974 pursuant to a petition described in clause (iii), the Secretary shall make that determination based on the requirements of Section 222 of the Trade Act of 1974, as in effect on such date of enactment.*

**Administration:** The TAARA 2015 provides that, for any petition filed after January 1, 2014, and on or before June 29, 2015 (petitions with numbers ranging from TA-W-85,000-89,999), for which an investigation is still pending, a determination will be issued based on the group eligibility provisions of the 2015 Act. The Department's investigation of these petitions under the provisions of the 2015 Act is automatic and does not require any action on the part of the petitioners or CSAs. However, Section 221(a)(2) of the 2015 Act continues to require the Governor to assist the Secretary in review of petitions by verifying information on the petition and providing other assistance that the Secretary may request.

#### **A.2.2. Reconsideration of Determinations Issued Before June 29, 2015, Denying Certification of Petitions**

**Statute:** Section 405(a)(1)(ii) of the 2015 Act reads:

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

*(I) reconsider that determination; and*

*(II) if the group of workers meets the requirements of Section 222 of the Trade Act of 1974, as in effect on such date of enactment, certify the group of workers as eligible to apply for adjustment assistance.*

**Administration:** The TAARA 2015 requires the Department to reopen investigations of any petitions filed after January 1, 2014, and on or before June 29, 2015, identified by a petition number between TA-W-85,000 and 89,999, that resulted in a denial of a certification before June 29, 2015. This includes petitions that were denied after reconsideration before June 29, 2015; were under investigation after the Department granted an application for reconsideration or for which an application for reconsideration was denied on or before June 29, 2015; or were the subject of judicial review by the Court of International Trade (CIT). This action is necessary to determine worker group eligibility under the petition and certification provisions of the 2015 Act. A list of the petitions for which the Department has reopened investigations has been posted on the

website at [http://www.doleta.gov/tradeact/docs/Reversion2014\\_Denials.xlsx](http://www.doleta.gov/tradeact/docs/Reversion2014_Denials.xlsx). This reconsideration is automatic and neither CSAs nor petitioners need take any action to reopen these investigations. To reopen investigations of petitions denied and under judicial review by the CIT on June 29, 2015, the Department has obtained dismissal of all such complaints to comply with Section 405 of the TAARA 2015.

The Department will notify petitioners and firms of the reopening of the investigations, conduct a full investigation of these petitions, and issue determinations based on whether the group eligibility criteria of the 2015 Act has been met. Workers covered under certifications of these petitions issued after this statutory reconsideration will be eligible for benefits and services under the Reversion 2014 Program up to September 28, 2015, and under the 2015 Program on and after September 28, 2015, as explained in Section A.2.4. of these Operating Instructions. The same appeal procedures applicable to determinations denying certification of petitions under the 2002 Program, the 2009 Program, the 2011 Program, the Reversion 2014 Program, and the 2015 Program also apply to negative determinations issued after statutory reconsideration.

### **A.2.3. Workers Denied Group Eligibility to Apply for ATAA**

No separate group eligibility certification is required for a worker to apply for RTAA under the 2015 Act. Therefore, the Department does not need to reopen investigations of petitions in the range of TA-W-85,000-89,999 where the worker group was certified for TAA, but denied group eligibility to apply for ATAA. In these cases, workers covered under certifications of petitions numbered TA-W-85,000-89,999, who are eligible for benefits under the 2015 Program, will automatically be eligible to apply for RTAA beginning September 28, 2015, when they transition to the 2015 Program, as explained in Section A.2.4.4. of these Operating Instructions. CSAs are required to provide notice of this additional benefit available to workers covered under these petitions, as explained in Sections A.2.4. and A.2.4.4. of these Operating Instructions.

### **A.2.4. Notice of Program Benefits for Workers Covered under Certifications of Petitions Numbered TA-W-85,000- 89,999**

**Statute:** Section 405(a)(1)(B) of the 2015 Act reads:

(B) *ELIGIBILITY FOR BENEFITS.* –

(i) *IN GENERAL.* – *Except as provided in clause (ii), a worker certified as eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974 pursuant to a petition described in subparagraph (A)(iii) shall be eligible, on and after the date that is 90 days after the date of the enactment of this Act, to receive benefits only under the*



*provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on such date of enactment.*

Section 405(a)(1)(A)(iii), referred to above as “subparagraph (A)(iii),” reads:

*(iii) Petition Described. – A petition described in this clause is a petition for a certification of eligibility for a group of workers filed under Section 221 of the Trade Act of 1974 on or after January 1, 2014, and before the date of the enactment of this Act.*

**Administration:** Beginning on September 28, 2015, the date that is 90 days after June 29, 2015, all workers covered under certifications of petitions numbered TA-W-85,000-89,999 will be considered either 2015 Program participants if they were receiving benefits or services under the Reversion 2014 Program, or eligible to apply for benefits and services under the 2015 Program in accordance with the deadlines and other individual benefit eligibility provisions of the 2015 Act. The 2015 Program participants who were receiving Reversion 2014 benefits on that date will continue to receive those benefits without interruption, while additional flexibilities available under the 2015 Program may apply to the receipt of those and other 2015 Program benefits. For example, training will continue for workers enrolled in TAA-approved training, and TRA eligibility will continue along with waivers of the enrollment in training requirement for Basic TRA eligibility issued by the CSA before that date. Additionally, CSAs must make employment and case management services available to all Reversion 2014 Program participants beginning on September 28, 2015. These services may be provided using TAA funds or through agreements with partner programs, as described in Section G.2. of these Operating Instructions.

CSAs must provide notice of the reauthorization of the TAA Program and the transition of workers covered under certifications of petitions numbered TA-W-85,000-89,999 to the 2015 Program on September 28, 2015, by providing 2015 Program information to every adversely affected worker who is part of a worker group covered by an active certification numbered TA-W-85,000-89,999. This notice should also explain that adversely affected workers who have received the maximum amount or weeks of a benefit under the Reversion 2014 Program will not be eligible for additional weeks of the benefit, as described in Section A.2.4.6. of these Operating Instructions. For example, if an adversely affected worker in one of these worker groups has completed a training program, the transition to the 2015 Program will not entitle the worker to enroll in a second TAA-funded training program. This notice may also incorporate additional mandatory notices and other information as described in this Section A of these Operating Instructions.

**A.2.4.1. Reversion 2014 Program Benefits Available From June 29, 2015, Through September 27, 2015**

Until September 28, 2015, workers covered under certifications of petitions numbered TA-W-85,000-89,999 will be eligible to continue to receive and apply for only the benefits and services available under the Reversion 2014 Program, subject to the individual benefit eligibility requirements and deadlines applicable to that program, and TAA funded employment and case management services will not be available to them.

**A.2.4.2. 2015 Program Benefits Available On or After September 28, 2015**

Workers covered under certifications of petitions numbered TA-W-85,000-89,999 who first apply for benefits and services on or after September 28, 2015 (the end of the 90-day period following enactment of the TAARA 2015), are only eligible to apply for the benefits and services available under the 2015 Program. On and after September 28, 2015, CSAs must continue to provide benefits and services to adversely affected workers who were receiving them before that date so long as they continue to be eligible for the benefit under the 2015 Program requirements, except for ATAA recipients who are addressed in Section A.2.4.4 of these Operating Instructions. Receipt of TRA is addressed in Section A.2.4.3 of these Operating Instructions.

**A.2.4.3. Notice of 2015 Program Benefits Available on or After September 28, 2015 to Adversely Affected Incumbent Workers**

Training is a benefit available to “adversely affected incumbent workers” under the 2009 Program, the 2011 Program, and the 2015 Program, but not under the 2002 Program or the Reversion 2014 Program. TEGL No. 22-08, Section D.2. defines “adversely affected incumbent worker” as a worker who is a member of a group of workers certified as eligible to apply for TAA, but who has not been totally or partially separated from adversely affected employment, and explains the benefits available to these workers. Beginning on September 28, 2015, CSAs should apply certifications of petitions numbered TA-W-85,000-89,999 to include adversely affected incumbent workers in the worker group identified or confirmed by the employer, even if the certification does not specifically mention this category of covered worker in the group. The training benefit for adversely affected incumbent workers, including part-time training, is explained in TEGL No. 22-08, Sections D.2.2 – D.2.5 and in Section D.2. of these Operating Instructions.

The Department will not amend certifications issued before June 29, 2015, in the TA-W-85,000- 89,999 series to expressly include adversely affected incumbent

workers. However, upon each certification, the Department provides CSAs with a list of the contact information for employers. CSAs have already received the contact information for all active certifications under this series and will receive a list of any new certifications made, along with the employer contact information. CSAs must take the following steps to provide notice of the expansion of the certifications to include these workers by: 1) contacting the employers of workers; 2) obtaining from each of these employers an expanded list of workers in the worker group to include any workers at the adversely affected employment who are threatened with separation but have not been totally or partially separated from that employment; 3) determining which workers are adversely affected incumbent workers based on this list; and 4) providing 2015 Program information to each worker on the list, including information about the training benefit available to adversely affected incumbent workers beginning September 28, 2015. Note that, if a worker applying for TAA claims to be an adversely affected worker and is not on the revised list, the worker should not be denied benefits summarily. The firm should be contacted to confirm the worker's status as an adversely affected worker and the list should be revised if that status is confirmed. The worker should be provided a written notice of the denial of TAA.

#### **A.2.4.4. Notice of 2015 Program Benefits Available to Older Workers After September 28, 2015**

RTAA is a benefit available to older reemployed adversely affected workers, over 50 years old, under the 2015 Program. This benefit will become available to workers in worker groups covered by certifications of petitions numbered TA-W-85,000-89,999, beginning on September 28, 2015. These workers fall into four categories: 1) workers who have applied for and are receiving ATAA on September 28, 2015, including workers who have applied for and have been determined eligible for ATAA; 2) workers who have applied for and have been denied ATAA by that date, including workers who are appealing these negative decisions; 3) workers who have applied for and have not yet received a determination on ATAA eligibility; and 4) workers who have not applied for ATAA, but will become eligible for RTAA beginning on September 28, 2015.

For the first category, workers who have received or have been approved to receive a first payment under ATAA on or before September 27, 2015, CSAs must notify these workers of the RTAA benefit and that they will continue to receive the ATAA benefit until the benefit is exhausted, unless they wish to take advantage of the additional RTAA flexibilities, as explained in Section H of these Operating Instructions. ATAA recipients who wish to take advantage of additional RTAA flexibilities, such as training, must be determined eligible for those benefits, if necessary, and must be reported as RTAA recipients from that

point forward. They will also be subject to all RTAA criteria from that point forward, except that CSAs need not re-determine eligibility for these former ATAA recipients based on RTAA criteria if the participant does not change jobs. If the participant does change jobs he or she may only continue to receive the remaining RTAA entitlement if the new employment is not with the same “firm” from which the worker was separated, as explained in Section H.3.3. of these Operating Instructions. Such transitioned RTAA recipients will be treated in the same manner as current RTAA recipients are treated under the 2011 Program, and the new provisions in Section H of these Operating Instructions will be applied as appropriate.

For the second category, workers covered under a certification of a petition numbered TA-W-85,000-89,999 whose applications for ATAA were denied before September 28, 2015, CSAs must automatically review the negative ATAA determinations (including those that are currently in the appeals process) denying the worker individual eligibility for ATAA. If the denial was based on the failure to meet a criterion that does not apply to eligibility for RTAA (e.g., did not obtain full-time employment by the 26th week after separation), then the CSA must notify the worker of the RTAA requirements and that the worker has the option to apply for benefits under the RTAA program. CSAs may provide information to workers in a separate notice, or along with the notice of all the benefits available to this category of workers under the 2015 Program that begins September 28, 2015.

For the third category, workers who have applied for and have not yet received a determination on ATAA eligibility, CSAs must review ATAA applications that have not yet been processed as if they were applications for RTAA under the 2015 Program. The CSAs must issue determinations on RTAA eligibility based on current RTAA eligibility criteria and the guidance in Section H. of these Operating Instructions, and must explain the new process and RTAA benefit to these applicants in the notices to individual workers.

For the fourth category, workers who have not applied for ATAA, but will become eligible for RTAA beginning on September 28, 2015, the notice by CSAs to workers described in Section A.2.4. of these Operating Instructions must include a notification to workers, aged 50 and older, that they are eligible to apply for RTAA benefits under the 2015 Program and let them know where to find further information about RTAA eligibility. Alternatively, CSAs may provide a separate notice of this benefit to all adversely affected workers covered under a certification of a petition numbered TA-W-85,000-89,999.

#### **A.2.4.5. Notice of 2015 Program Benefits Available to TRA Claimants Beginning on September 28, 2015**

TRA is a benefit available to workers under all TAA Programs, including the 2015 Program. CSAs must review all determinations denying a worker covered under a certification of a petition numbered TA-W-85,000-89,999 individual eligibility for TRA. If the denial of a claim for TRA was based on an eligibility criterion that does not apply to eligibility for TRA under the 2015 Program (e.g., did not enroll in training by the later of the 8<sup>th</sup> week after certification or the 16<sup>th</sup> week after the most recent total separation; did not apply for Additional TRA within 210 days after the later of date the worker is covered by a TAA certification or after the date of the worker's total or partial separation; or other Limitations of TRA due to Special Rules or Changes found in Section C.8 of TEGL No. 07-13), then the CSA must first determine whether the claim meets the 2015 Program criteria for TRA eligibility. In making this determination, the CSA may apply, as appropriate, either the Federal Good Cause standard for extending benefit deadlines, as described in Section C.2.1. of these Operating Instructions or the doctrine of Equitable Tolling, consistent with the guidance provided at TEGL No. 08-11, to extend benefit deadlines in egregious circumstances. In a separate notice, CSAs must provide information about this review of determinations denying TRA to Reversion 2014 Program participants.

#### **A.2.4.6. Workers Who Received Benefits Under the Reversion 2014 Program- Computation of Maximum Benefits**

**Statute:** Section 405(a)(1)(B)(ii) of the 2015 Act reads:

*(ii) COMPUTATION OF MAXIMUM BENEFITS. – Benefits received by a worker described in clause (i) under chapter 2 of title II of the Trade Act of 1974 before the date of the enactment of this Act shall be included in any determination of the maximum benefits for which the worker is eligible under the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on the date of the enactment of this Act.*

**Administration:** Workers who received benefits under the Reversion 2014 Program on or after January 1, 2014, and before September 28, 2015, will transition from the Reversion 2014 Program to the 2015 Program on September 28, 2015. Any benefits or services received by the worker before September 28, 2015, apply toward the maximum benefits the worker may receive under the 2015 Program. In particular, this includes both weeks of TRA and weeks of training received.

For workers receiving benefits under the Reversion 2014 Program who have not enrolled in training and transition to the 2015 Program, the applicable training

enrollment deadlines will be those described in Section C.2. of these Operating Instructions.

### **A.3. Petitions filed after June 29, 2015**

#### **A.3.1. 2015 Program Benefits Available to Workers Covered by Certifications of Petitions filed on or after June 29, 2015**

**Statute:** Section 402(b) of the 2015 Act reads:

*(b) APPLICABILITY OF CERTAIN PROVISIONS. – Except as otherwise provided in this subtitle, the provisions of chapters 2 through 6 of title II of the Trade Act of 1974, as in effect on December 31, 2013, and as amended by this subtitle, shall –*

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

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

**Administration:** Workers covered by certifications of petitions filed on or after June 29, 2015, are subject only to the provisions of the 2015 Act, which duplicate the provisions of the 2011 Act that were in effect on December 31, 2013. The Department has started a new TA-W numbering series for petitions filed under the 2015 Act, beginning with TA-W-90,000. CSAs must ensure their data entry systems, including case management systems and performance reporting systems, can accommodate a six digit TA-W number in the event the numbering series exceeds TA-W-100,000. Workers covered by certifications of petitions filed on or after June 29, 2015, identified by a certification number of TA-W-90,000 and above, are subject to the provisions of the 2015 Act, as implemented in these Operating Instructions, as well as the applicable regulations codified at 20 CFR 617 and 618, and 29 CFR 90.

#### **A.3.2. Extended Impact Date for Certifications of Petitions Filed Within 90 Days of June 29, 2015**

**Statute:** Section 405(a)(3) of the 2015 Act reads:

*(3) QUALIFYING SEPARATIONS WITH RESPECT TO PETITIONS FILED WITHIN 90 DAYS OF DATE OF ENACTMENT. – Section 223(b) of the Trade Act of 1974, as in effect on the date of the enactment of this Act, shall be applied and administered by substituting “before January 1, 2014” for “more than one year before the date of the petition on which such certification was granted” for purposes of determining whether a worker is eligible to apply for adjustment assistance pursuant to a petition filed under Section 221 of the Trade Act of 1974 on or after the date of the enactment of this Act and on or before the date that is 90 days after such date of enactment.*

**Administration:** In general, certifications cover workers separated from employment up to one year before the date of the petition. This date is known as the “impact date” of the certification. The 2015 Act provide that all certifications of petitions filed within 90 days after the date of enactment of the 2015 Act, which is 11:59 PM ET 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. For example, since the date of enactment is June 29, 2015, if the date of the petition is September 1, 2015, which is fewer than 90 days after June 29, 2015, a certification of that petition will cover workers separated on or after January 1, 2014. 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.

The determination documents certifying petitions clearly identify the impact date and expiration date for each certification, and will use the impact date of January 1, 2014, where appropriate. This means that workers covered by certifications of petitions filed during the period from June 29, 2014, through September 27, 2015, will have an earlier impact date than certifications of petitions filed during the period from January 1, 2014, through June 28, 2015. This could cause confusion and complaints when those workers who were denied eligibility for TAA because they were laid off more than a year before the date of the petition learn about other workers who were laid off more than a year before the date of the petition who were determined to be eligible. CSAs should be prepared to explain that this difference in treatment was directed by the statute.

## **B. GROUP ELIGIBILITY REQUIREMENTS**

### **B.1. Primary Worker Certification Criteria**

**Statute:** Section 222(a) of the 2015 Act reads:

*(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:** The TAARA 2015 restores the group eligibility requirements for certification available under the 2011 Program; unlike the 2009 Program groups of workers in a public agency are not eligible for certification. Specifically, the TAARA 2015 restores the expanded coverage of workers for firms that produce articles. Under the 2002 Program and the Reversion 2014 Program, the Department could not certify groups of 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 2015 Program provides, in these circumstances, for certification of the worker groups 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 that are like or directly competitive with imports of articles incorporating one or more component parts produced by the workers' firm.

The TAARA 2015 restores coverage of workers for firms that supply services on the same terms as workers for firms that produce articles. The 2002 Program and the Reversion 2014 Program covered workers only where production of an article was shifted to certain foreign countries, or for other countries where there "has been or is likely to be an increase in imports like or directly competitive with articles produced by" the workers' firm. The 2015 Program, like the 2011



Program and the 2009 Program, 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 2015 Program continues the practice under the 2002 Program and the Reversion 2014 program 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. Additionally, the 2015 Program, like the 2011 Program and the 2009 Program, covers workers in a firm that acquires services from a foreign country that are like or directly competitive with services that are supplied by such 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, section 222(a)(1) of the 2015 Act, has not changed since the inception of the TAA Program. However, TAARA 2015 restores the definition of a "firm" as amended by the TGAAA to include an "appropriate subdivision" in the definition and delete references to "and appropriate subdivision" in 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 Section 222(a)(2)(A)(i) and (ii) or Section 222(a)(2)(B)(i) of the 2015 Act is satisfied. Section 222(a)(A)(i) and (ii) require that:

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

*(A)(ii)(I) imports of articles or services like or directly competitive with articles or services produced or supplied by the workers' firm have increased;*

*(ii)(II)(aa) 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*

*(ii)(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by the workers' firm have increased; or*

*(ii)(III) 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 that was directly incorporated*

*have increased.*

The first part of this requirement, Section 222(a)(2)(A)(i), has not changed from the worker group eligibility criterion applied to the TAA Program since its inception.

The second part of this requirement, Section 222(a)(2)(ii), restores the certification criteria in effect under the 2009 Program and the 2011 Program to include:

- certification based on increased imports of services as well as increased imports of articles;
- certification 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; and
- 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.

Section 222(a)(2)(B) of the 2015 Act requires that:

*(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, Section 222(a)(2)(B)(i), includes workers for firms that supply services, thus significantly expanding coverage under the 2015 Program, compared to the 2002 Program and Reversion 2014 program, to include shifts in the supply of services by the workers' firm. It now includes shifts of either the production of articles or the supply of services to any foreign country by the workers' firm. The second part of this requirement provides for worker group eligibility based on foreign contracting by the workers' firm. That requirement 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 2015 Act requires a causal nexus between the increased imports or shift of

production/services to a foreign country and the workers' separations. Under the 2002 Program and the Reversion 2014 Program, the *contributed importantly* criterion was explicit only in increased imports cases and was implicit in shift cases. The TGAAA, TAAEA, and TAARA 2015 make the requirement explicit for cases involving a shift in production or a shift in acquisition of a service under the 2009 Program, the 2011 Program, and the 2015 Program.

## **B.2. Secondarily-Affected Worker Certification Criteria**

**Statute:** Section 222(b) of the 2015 Act reads:

*(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 (1).*

Section 222(c)(3) – (4) 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 Program and the Reversion 2014 Program cover workers of a firm that supplies component parts ( a “supplier”) to 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”) to a primary firm.

The 2015 Program, like the 2011 Program and 2009 Program, also 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 and does not contain the requirement in the 2002 Program and Reversion 2014 Program that the certification of the primary firm be based on an increase in imports from or a shift in production to only Canada or Mexico. However, the requirement under the 2002 Program and the Reversion 2014 Program stating that the supplier must directly supply the primary firm, also applies for the 2015 Program (and the 2011 Program and the 2009 Program). Therefore, 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 2015 Program, like the 2011 Program and the 2009 Program, retains the “direct” requirement under the 2002 Program and the Reversion 2014 Program: 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, under the 2015 Program (and 2011 Program and 2009 Program), there is no requirement that downstream worker groups may be certified as secondarily affected only 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.

### **B.3. Verification of Information**

**Statute:** Section 222(d)(3) of the 2015 Act reads:

*“(d)(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 TAARA 2015 does not change the Department's obligation to make a determination on the eligibility of groups of workers to apply for TAA based on substantial evidence, its authority to subpoena information necessary to make a determination on a petition, or its obligation to protect confidential information.

However, the 2015 Act, like the 2009 Act and the 2011 Act, requires a firm or customer to verify the information it provides to the Department during the investigation of a TAA petition. The Department implements this provision by requiring the firm or customer providing information through questionnaires or in other formats to certify that the information is accurate and complete. The various forms and communications used by the Department in collecting relevant information also may include an affirmation by the submitting official stating that the information provided is correct to the best of his or her knowledge and belief. The Department may consider that a reasonable basis exists for determining that such certification or affirmation is not required. For

example, an affirmation would not be required when the official of the firm or customer has provided information on which the Department has reasonably relied in past certification determinations.

The 2015 Act, like the 2009 Act and the 2011 Act, codifies at Section 223(d)(3)(B) specific requirements for issuance of subpoenas when the Department is unable, through other means, to obtain information necessary for making a determination. The Department is required to issue a subpoena if the firm or customer fails to provide the requested 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 20<sup>th</sup> day of the investigation.

Section 222(d)(3)(C) of the 2015 Act contains slightly different confidentiality protections on confidential information than the regulatory requirements of 29 CFR 90.33 that apply to the 2002 Program and the Reversion 2014 Program. The 2015 Act, like the 2009 Act and the 2011 Act, expressly prohibits the Department from releasing information it gathers in the course of the investigation of a petition where the Department considers that information to be "confidential business information." The Department currently defines that term in 29 C.F.R. 90.33.

The 2015 Act, like the 2009 Act and the 2011 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" the Department. The second exception to confidentiality is to provide "confidential business information to a court in camera or to another party under a protective order issued by a court." In addition to these exceptions, the Department will release confidential business information with the permission of the entity submitting it.

#### **B.4. Firms Identified by the International Trade Commission**

**Statute:** Section 222(e) of the 2015 Act reads:

*(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 TAARA 2015 restores the provisions of the 2011 Act (and the 2009 Act) that allow the Department, without an investigation, to issue an affirmative determination on a petition for group eligibility based on certain findings by the International Trade Commission (ITC). Section 222(e) of the 2015 Act requires that the following three criteria must be satisfied:

1. The workers' firm is 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) or 421(b)(1) of the Trade Act of 1974, as amended; or Section 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 under the statutory provisions identified in criterion 1, 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.

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(e)(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. Therefore, 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 under Section 222 (a) and (b).

#### **B.4.1. Notification of Opportunity to File A Petition Following International Trade Commission (ITC) Identification of Firms**

**Statute:** Section 224(f) and (g) of the 2015 Act reads:

*(f) Industry Notification of Assistance. – Upon receiving a notification of a determination under subsection (c), (d), or (e) with respect to an industry –*

*(1) the Secretary of Labor shall –*

*(A) notify the representatives of the domestic industry affected by the determination, firms publicly identified by name during the course of the proceeding relating to the determination, and any certified or recognized union or, to the extent practicable, other duly authorized representative of workers employed by such representatives of the domestic industry, of –*

*(i) the allowances, training, employment services, and other benefits available under this chapter;*

*(ii) the manner in which to file a petition and apply for such benefits; and*

*(iii) the availability of assistance in filing such petitions;*

*(B) notify the Governor of each State in which one or more firms in the industry described in subparagraph (A) are located of the Commission's determination and the identity of the firms; and*

*(C) upon request, provide any assistance that is necessary to file a petition under section 221*

*(g) Representatives of the Domestic Industry. – For purposes of subsection (f), the term 'representatives of the domestic industry' means the persons that petitioned for relief in connection with –*

*(1) a proceeding under section 202 or 421 of this Act;*

*(2) a proceeding under section 702(b) or 732(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)); or*

*(3) any safeguard investigation described in subsection (d)(2) or (d)(3).*

**Administration:** As under the 2011 Act, paragraphs (c), (d), and (e) of Section 224 of the 2015 Act imposes an affirmative duty on the ITC to notify the Secretary of Labor (and the Secretary of Commerce and the Secretary of Agriculture) when it makes certain affirmative determinations of import injury under the Trade Act and the Tariff Act of 1930. Paragraph (f) of this section requires the Secretary of Labor (and the Secretary of Commerce and the Secretary of Agriculture) to notify representatives of the domestic industry (ITC petitioners), of the benefits available under the Trade Adjustment Assistance programs administered by



their agencies, and the availability of assistance in filing a petition for certification under these programs. The Secretary of Labor also is required to notify publicly identified firms and unions identified in those affirmative determinations of the TAA for Workers Program petition process, and to notify the Governor of each State in which those firms are located of the ITC determination and the firms covered by that determination, and to provide assistance in the filing of petitions. The Department will work with the ITC to ensure that the required notice of the ITC determinations are promptly brought to the attention of the Department. By letter and electronic means, the Department will provide the required notice to domestic industry representatives, firms identified by name during the ITC proceedings, unions and other identified authorized worker representatives, and the Governor and CSAs of each State in which one or more firms identified by the ITC is located.

Petitions for certifications based on the criteria of Section 222(e) may be filed in the usual process by a one-stop operator or one-stop partner as defined in Section 3 of the WIOA, including CSAs and the State dislocated worker unit, as well as an official of one of the firms listed on the ITC determination, a group of workers from those firms, or a union official, or other legally authorized representative of those workers. CSAs are encouraged to share the list of firms identified in an ITC determination with Rapid Response staff in the State to assist the Department in notifying workers of the opportunity to obtain TAA certification based on the issuance of these ITC determinations if a petition is filed. The CSAs are responsible for making available and providing assistance in the filing of petitions for certification of groups of workers in these publicly identified firms.

## **C. TRADE READJUSTMENT ALLOWANCES (TRA)**

### **C.1. TRA Eligibility**

**Statute:** Section 231(a)(1) – (4) of the 2015 Act reads:

*(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 therefor) 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 finds, to which the worker was entitled (or would be entitled if he applied therefor); 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:** As under the 2011 Act, Section 231(a) of the 2015 Act eliminates 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 their Unemployment Insurance (UI) entitlement (as defined in

Section 247(11)) has been exhausted. Unlike under the 2002 and the Reversion 2014 Programs where TRA may be paid for weeks of unemployment beginning more than 60 days after the date on which the petition that resulted in the certification was filed, this provision means that no payments may be made retroactively for weeks of unemployment that occur before the certification was issued.

Section 231(a)(1) through Section 231(a)(5), establishing requirements for TRA eligibility, 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 UI for a week within the benefit period (or would be entitled if the worker filed a UI claim) and exhausted all UI entitlement, except an entitlement (or what would be an entitlement to) additional compensation that is funded by a state and is not reimbursed from any Federal funds; does not have a waiting period applicable for any such UI; 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. Section 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**

**Statute:** Section 231(a)(5)(A) of the 2015 Act reads:

*(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:** As under the 2011 Act, Section 231(a)(5)(A) of the 2015 Act requires, as a condition for receiving TRA, that the worker be enrolled in training and Section 231(a)(5)(C) allows a worker to receive a waiver of the training requirement in order to receive Basic TRA. “Enrolled in training” continues to mean the worker’s application for training has been approved by the CSA and the training institution has furnished written notice to the CSA that the worker has been accepted into the approved program set to begin within 30 days of such approval. Section 231(a)(5)(A)(ii) sets deadlines by which the enrollment in training must occur. This means that, for a worker to be eligible for TRA, he or she must be enrolled in training when the enrollment deadline is reached. These deadlines apply for eligibility for any TRA payment – Basic TRA, Additional TRA, and Completion TRA. Therefore, timely notice of benefit deadlines is critical, and the CSA must document its efforts to notify workers of the training enrollment deadlines.

Further, the Department continues to interpret these deadlines as applying to the issuance of a waiver of the training enrollment requirement. Therefore, in determining eligibility for TRA, a CSA may not waive this requirement after the deadlines have passed.

The 2015 Program applies longer enrollment deadlines (the later of 26 weeks from the separation or certification date) than the 2002 Program and the Reversion 2014 Program (the later of 8 weeks after certification or 16 weeks after separation), but the deadlines are the same for the 2009 Program and the 2011 Program. This longer deadline allows a worker to actively engage in a job search for a longer period before making a decision about training, and to make full use of the employment and case management services available under the 2015 Program 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, assessments, and other case management services which were difficult to perform when the shorter enrollment deadlines were in effect.

The 2015 Program 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 2015 Program also continues to allow 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 about the training enrollment deadlines, which was in effect under the 2009 Program and the 2011 Program. 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 in TEGL No. 22-08, Section C.2. 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 or her eligibility to apply for TAA and the requirement to enroll in training absent a waiver of the training requirement. However, in this situation, the deadlines may be tolled for a longer period, if appropriate. CSAs should review TEGL No. 08-11 *The Availability of Equitable Tolling of Deadlines for Workers Covered Under TAA Certifications* in considering the application of equitable tolling of these deadlines.

The 2015 Program continues to have the additional deadline for training enrollment that applies to workers under the 2002 Program, the 2009 Program, the 2011 Program, and the Reversion 2014 Program who were granted a waiver of the training requirement. As under the 2009 Program and the 2011 Program, this provision is now in Section 231(a)(5)(A)(ii)(V). Workers who have received a training waiver must be enrolled in training before the last day of a period set by the Secretary after the termination of a waiver in order to maintain future eligibility for TRA. Accordingly, the Secretary determined in TEGL No. 22-08, Section C.2. 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, and that determination continues to apply for all Programs.

### **C.2.1. Federal Good Cause Provision for Waiving Certain Time Limits**

The TAARA 2015 reinstates the Federal “Good Cause” provision of Section 234 of the 2011 Act, which allows for a waiver of deadlines relating to time limitations on filing an application for TRA or enrolling in training based on “good cause” determined under Federal criteria established by the Secretary.

**Statute:** Section 234(b) of the 2015 Act reads:

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

**Administration:** As under the 2011 Program, Section 234(b) of the 2015 Act authorizes the Secretary to establish criteria for determining when to waive the time limitations with respect to an application for TRA or enrollment in training. CSAs must make a determination that there is good cause for issuing a waiver, in accordance with the Federal criteria explained in Section C.6. of TEGL No. 10-11, and as follows. CSAs must consider the following factors, if relevant, before waiving these time limitations. These factors are:

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

- a natural catastrophe, such as an earthquake, fire, or flood
- an employer's failure or undue delay in providing documentation, including instructions, a determination or notice, or pertinent and important information
- compelling personal affairs or problems that could not reasonably be postponed, such as an appearance in court or an administrative hearing or proceeding, substantial business matters, attending a funeral, or relocation to another residence or area
- the state failed to effectively communicate in the worker's native language and the worker has limited understanding of English
- loss or unavailability of records due to a fire, flood, theft, or similar reason. Adequate documentation of the availability of the records includes a police, fire, or insurance report that contains the date of the occurrence and the extent of the loss or damage.

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

### **C.2.2. Justifiable Cause to Extend the Period**

**Statute:** Section 233(h) of the 2015 Act reads:

*(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:** A worker may receive weeks of Basic TRA and Additional TRA only during the eligibility periods set by the statute, except for a limited statutory exception. As under the 2011 Act, Section 233(h) of the 2015 Act allows for an extension of these eligibility periods for "justifiable cause," meaning circumstances determined by the CSA to be beyond the worker's control. In making this determination, the CSA will apply the criteria described under the discussion above for the Federal Good Cause provision, as well as regulations, policies, and practices applicable to administration of the State's UI laws. Please also see Section C.5.2. of these Operating Instructions for more information on justifiable cause and Completion TRA under the 2015 Program.

### **C.3. Waivers of the Training Requirement**

**Statute:** Section 231(c) of the 2015 Act reads:

(c) *WAIVERS OF TRAINING REQUIREMENTS.* –

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

(A) *HEALTH* – *The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.*

(B) *ENROLLMENT UNAVAILABLE.* – *The first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.*

(C) *TRAINING NOT AVAILABLE* – *Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in Section 3 of the Carl D. Perkins Vocational and Technical Education Act of 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.*

**Administration:** As under the 2011 Act, Section 231(c) of the 2015 Act provides that Basic TRA is only payable if an individual is enrolled in TAA-approved training, participating in TAA-approved training, has received a waiver of the requirement to participate in training, or has completed TAA-approved training. Therefore, workers who meet the requirements of any of these three waiver provisions may still be eligible for Basic TRA without enrolling in training if a waiver is issued within 26 weeks of the earlier of the date of certification or date of qualifying separation, as discussed in Section C.2. of these Operating Instructions.

Note that a CSA may no longer grant a worker a waiver of the training requirement for Basic TRA on the basis of the three other criteria in effect for the 2002 Program or 2009 Program, and described in TEG L No. 11-02, Section D.3 and TEG L No. 22-08, Section, Section C.3 of Attachment A, respectively: Recall, Marketable Skills, or Retirement.



#### **C.4. Weekly Amounts of TRA**

**Statute:** Section 232(a)(1) – (2) of the 2015 Act reads:

*(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:** As under the 2011 Act, Section 232(a) of the 2015 Act establishes how a CSA is to determine the weekly amount of TRA that 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. However, as under the 2009 Program and the 2011 Program, for workers participating in approved training, no deduction may be 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 affects 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 C.2. of these Operating Instructions). 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 WBA for calculating the weekly TRA payment.

#### **C.4.1. Election of TRA or UI**

**Statute:** Section 232(d) of the 2015 Act reads:

*(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:** After establishing TRA eligibility, an adversely affected worker might return for a short duration to either the same adversely affected employment or other employment. This is likely to occur during breaks in training or when the worker is employed during training. The wages and employment earned from that subsequent employment may be sufficient to establish a second benefit year under state law, but with a lower WBA, as well as for fewer weeks than the first benefit period, resulting in a UI maximum benefit amount that is lower during the second benefit year than it was in the first benefit year.

As under the 2011 Act, Section 231(a)(3) of the 2015 Act, requires, as a condition of receiving TRA, that a worker “has exhausted all rights to any unemployment insurance,” except any additional compensation funded by a State and not reimbursed from Federal funds. Therefore, absent the election provision of Section 232(d), the worker’s TRA, based upon the higher WBA of the first benefit year, would automatically stop while the worker collects UI based upon the lower WBA of the second benefit year. The worker is penalized by receiving a lower benefit after exercising the option to continue working while pursuing training or during breaks in training when TRA is not payable, particularly during summer months when limited enrollment may limit training opportunities. This creates a work disincentive and dilemma for the worker who is able and available to work while participating in training, and during breaks in training.

Section 232(d), 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: 1) the worker is entitled to receive UI as a result of a new benefit year based on employment in which the worker engaged after establishing TRA eligibility, following a total separation from adversely affected employment; and 2) the worker is otherwise entitled to TRA.

The meaning of the first condition for the election to apply, paragraph (d)(1), must be clarified. The phrase “part-time or short-term employment in which the worker engaged after the worker’s most recent total separation from adversely affected employment” is used to describe the employment that may be

considered as the basis for establishing the new benefit year. The Department interprets this provision as meaning that any employment following the worker's most recent total separation as described in Section 231(a)(5)(A)(ii)(I) and (II) may satisfy the first condition because, in practice, a worker who establishes a UI claim with a WBA that is less than the TRA benefit amount would necessarily have had subsequent employment that was part-time or of a short duration. That subsequent employment also may have been part-time or short-term work in the adversely affected employment. This interpretation is consistent with statutory intent to apply State law, which requires a benefit year to be established with all available wages in the applicable base period, while allowing workers to continue to work while participating in training and during breaks in training without being penalized when that employment results in the establishment of a new benefit year with a lower WBA than the TRA benefit amount.

Once the CSA has determined that the adversely affected worker is eligible to receive UI benefits during a second benefit year and is otherwise eligible for TRA, the CSA must provide the worker with a full explanation, in writing, of how the election provision applies to him or her, consistent with the requirements of 20 CFR 617.4, and document the worker's choice in the case management file. There may be situations in which choosing UI may be more advantageous to the individual. For example, a training break may be approaching and the worker may have no income support during such time. The election decision also may be driven by the desire to have income support during the training break to assist in the proportional payment of the HCTC benefit available to eligible individuals. The role of the CSA in explaining the election opportunity to the worker is critical because of these complexities.

### **C.5. Completion TRA**

**Statute:** Section 233(f) of the 2015 Act reads:

*(f) PAYMENT OF TRADE READJUSTMENT ALLOWANCES TO COMPLETE TRAINING – Notwithstanding any other provision of this Section, in order to assist an adversely affected worker to complete training approved for the worker under Section 236 that leads to the completion of a degree or industry-recognized credential, payments may be made as trade readjustment allowances for not more than 13 weeks within such period of eligibility as the Secretary may prescribe to account for a break in training or for justifiable cause that follows the last week for which the worker is otherwise entitled to a trade readjustment allowance under this chapter if--*

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

- (2) the worker participates in training in each such week; and*
- (3) the worker –*
  - (A) has substantially met the performance benchmarks established as part of the training approved for the worker;*
  - (B) is expected to continue to make progress toward the completion of the training; and*
  - (C) will complete the training during that period of eligibility.*

**Administration:** As under the 2011 Act, Section 233(f) of the 2015 Act provides that up to 13 weeks of Completion TRA may be payable to assist a worker to complete training that leads to a degree or “industry-recognized credential.” The term “industry-recognized credential” is not defined in the 2015 Act, although the term “recognized postsecondary credential” is defined in Section 247(19) and that term is used in section 239(j)(2)(A)(i)(IV) to identify a factor in one of the primary indicators of performance that the CSA must report to the Secretary. Section 3(52) of WIOA contains the same term and definition for similar reporting purposes. For purposes of identifying the type of training for which Completion TRA may be approved under the 2015 Program, the guidelines contained in TEGL No. 15-10 continue to apply. Further guidance will be issued to address the application of the new term in performance reporting requirements under the 2015 Act and the WIOA.

Assuming a worker meets the other TRA eligibility requirements, the worker qualifies for up to 13 weeks of Completion TRA if all of the following criteria (also identified in TEGL No. 10-11, Section C.3.) are met:

1. The requested weeks are necessary for the worker to complete a training program that leads to completion of a degree or industry-recognized credential, as described in TEGL No. 15-10; and
2. The worker is participating in training in each such week; and
3. The worker has substantially met the performance benchmarks established in the approved training plan (see Sections C.5.1. and D.8.); and
4. The worker is expected to continue to make progress toward the completion of the approved training; and
5. The worker will be able to complete the training during the period authorized for receipt of Completion TRA (see Section C.6.).

These requirements are applied at the time the CSA approves payment for a week of Completion TRA. If, during the period in which a worker is eligible to receive Completion TRA, the worker ceases to meet any of the five conditions listed above, the CSA may no longer pay Completion TRA. For example, if a worker has been meeting training benchmarks and was expected to complete training within the established period, but at the point of payment of week five,

there is an indication that training will not be completed within the established period, Completion TRA payments must cease. However, weeks of Completion TRA previously paid based on information that was correct at the time of payment is properly paid, and therefore CSAs must not treat them as overpayments.

A training participant is required to file an application for Completion TRA, as provided in TEGl No. 10-11, Change 2 (Question 1). CSAs must have an application process to document the training participant's eligibility based on the eligibility criteria for Completion TRA.

### **C.5.1. Training Benchmarks to Meet Completion TRA Eligibility Requirements**

A CSA must establish training benchmarks when the worker enrolls in approved training to enable the CSA to monitor the worker's progress toward completing the approved training within the 130-week maximum duration, as described in Section C.6. of these Operating Instructions (and TEGl No. 10-11). The worker must substantially meet the following two benchmarks to receive Completion TRA:

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

Therefore, benchmarks must be included in all but short-term training plans. These benchmarks must be flexible enough to allow for some variability (e.g., a single course failure or missed week of attendance should not make the worker ineligible), and both practical and measurable enough to allow administration across a broad spectrum of training scenarios and state environments. These benchmarks are related to, but differ from, the requirement that a worker "participate in training" as a condition of eligibility for TRA. "Participation in training" merely requires that a worker must attend scheduled classes and required events or otherwise follow the rules of the training program in accordance with the requirements documented by the training institution, while benchmarks measure satisfactory progress of the worker during his or her training.

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

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

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

Upon one substandard review of the established benchmarks, the worker will be given a warning. Two substandard reviews indicate that the worker will not be able to meet both benchmarks and must result in a modification to the training plan since the worker will no longer be eligible for Completion TRA and a modification of the training plan may be the only way the worker can complete training. In this way, the training benchmarks may be used to provide early intervention that will provide the opportunity to determine whether the training plan in place is appropriate for the individual or would be prudent to revise.

A CSA may modify a participant's training plan after he or she fails to satisfy one or both training benchmarks for the first time and is not required to wait until a second substandard review. As described in TEGl No. 10-11, Change 2 (Questions 5 and 6), the purpose of training benchmarks is to allow early and ongoing assessment of the performance of a training participant to determine whether the original training plan is a good fit for the individual. Therefore, if a training participant fails a benchmark review for the first time, but that failure is of a magnitude as to make a failure at a later benchmark review likely, then the CSA should reevaluate the training plan with the training participant, and amend the training plan, if necessary, to improve the likelihood that the participant will complete the training program. Similarly, if a TAA training participant is failing two courses in one benchmark assessment period, this will result in only one substandard review, however, if the training participant's failure of two courses makes timely completion of training under the training plan unlikely, then the training plan should be amended.

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

### **C.5.2. Completion TRA Eligibility Period Established by the Secretary**

As under the 2011 Act, Section 233(f) of the 2015 Act gives the Secretary discretion to establish the eligibility period within which the 13 weeks of Completion TRA are payable and training must be completed in order to meet the Completion TRA eligibility requirements.

The Secretary has determined that the eligibility period for Completion TRA will be the 20-week consecutive calendar period beginning with the first week in which a worker files a claim for Completion TRA, regardless of when the first payment is received, as stated in TEGL No. 10-11, Change 2 (Question 2). Completion TRA eligibility does not require a training participant to file a claim for Completion TRA for the first week following either expiration of the eligibility period for Additional TRA, or the exhaustion of Additional TRA; filing a claim after either of those first weeks is permitted. However, a claim for Completion TRA must be filed in order to receive a Completion TRA payment. Since training that leads to a degree or industry-recognized credential must be completed during the 20-week eligibility period for Completion TRA, the first week of Completion TRA claimed should be carefully considered in coordination with case management while the participant's training plan is being developed.

If "justifiable cause" exists, the Secretary may extend that 20 week period. "Justifiable cause," as used in Section 233(f), is interpreted as having the same meaning as used in Section 233(h) of the 2015 Act. That Section provides for the extension of the eligibility periods for Basic and Additional TRA when the Secretary determines there is "justifiable cause." Accordingly, the definition of "justifiable cause" for Section 233(h) in Section C.2.2. of these Operating Instructions (and TEGL No. 10-11) applies to Section 233(f). "Justifiable cause" means circumstances beyond the worker's control. Examples of justifiable cause for extending the Completion TRA eligibility period include situations where the provider changes the requirements of a training program while the program is in progress, where a course or courses are cancelled, and where required courses are not offered in accordance with the originally anticipated schedule and the CSA is unable to identify an alternative that will allow for completion of the training program within the 20-week period. However, an extension will not increase the maximum number of payable Completion TRA weeks above 13.

TEGL No. 10-11, Change 2, (Questions 3 and 4) describe a scenario that CSAs may not amend the training participant's training plan to provide for a later 20-week eligibility period for Completion TRA if (1) training is interrupted after the individual has filed a claim for Completion TRA; and (2) that interruption leads to a training completion date that occurs after the 20-week eligibility period in the approved training plan. The 20-week eligibility period to receive up to 13

weeks of Completion TRA allows for the flexibility of a break in training of up to 7 weeks, but no more. In this scenario, since the amended training completion date is after the 20-week eligibility period in the approved training plan, the individual will no longer be eligible for Completion TRA. In the same scenario, if a worker has not yet filed a claim for Completion TRA, the eligibility period for Completion TRA has not begun. In that case, the CSA may amend the participant's training plan to provide for a later training completion date and correspondingly later 20-week eligibility period for Completion TRA.

#### **C.6. Maximum Number of Weeks of TRA and Duration**

As under the 2011 Act, Section 233(f) of the 2015 Act provides that the total maximum number of weeks of TRA for which a worker may be eligible is 130 weeks, which includes the maximum number of weeks of Basic TRA, Additional TRA, and Completion TRA, as described below.

##### **Basic TRA**

Basic TRA is payable for up to 52 times the individual's WBA during the first UI benefit period following the TRA qualifying separation. The maximum amount of Basic TRA payable is reduced by the amount of the worker's full UI entitlement (or the amount the worker would have been entitled if the worker had applied) in the first benefit period, as described in Section C.1. of these Operating Instructions.

Basic TRA is payable to workers who are enrolled in or participating in TAA-approved training, or who completed TAA training following a qualifying separation, or who have received a timely waiver of the training requirement as described in Section C.3. of these Operating Instructions. Basic TRA is payable during the 104-week period beginning with the first week in which the individual experienced a total qualifying separation as provided at 20 CFR 617.3(m)(1).

##### **Additional TRA**

Additional TRA is payable for a maximum of 65 weeks after exhaustion of Basic TRA while the worker is in approved TAA training. Additional TRA is payable during the consecutive calendar weeks that occur in the 78-week period that begins immediately following the last week of entitlement to Basic TRA, the first week of approved TAA training if the training begins after the last week of entitlement to Basic TRA, or the first week in which TAA training is approved, if such training already has commenced (although Additional TRA or training costs may not be paid for any week before the week in which the TAA training



was approved).

## **Completion TRA**

Completion TRA is payable for up to 13 weeks to assist a worker in completing TAA training after exhaustion of Additional TRA. Completion TRA is payable during weeks that occur in the 20-week consecutive calendar period that begins with the first week in which the training participant files a claim for Completion TRA and seeks compensation for such given week. Therefore, a worker may experience a break after exhaustion of Additional TRA, when no TRA is payable, before the eligibility period for Completion TRA begins. The 20-week consecutive calendar period within which a worker may receive up to 13 weeks of Completion TRA allows the further flexibility of continuing eligibility to accommodate a break in training of up to but no longer than 7 weeks, so long as the worker completes the training by the end of the 20-week eligibility period. No payment for breaks in training are allowed, and the participant can only be paid Completion TRA for each week of full-time training, and then only if all five of the Completion TRA eligibility criteria described in Section C.5. of these Operating Instructions are met. Once begun, a maximum of 13 weeks of Completion TRA may be paid within the 20 weeks.

## **C.7. Limitations on TRA**

### **C.7.1. Elimination of Prerequisite and Remedial TRA**

The 26 weeks of TRA exclusively for workers participating in remedial or prerequisite training, referred to as Remedial TRA (or Prerequisite and Remedial TRA under the 2002 Program and the 2009 Program) is no longer payable. As described in Section C.6., above, the types of TRA payable under the 2015 Program are the same as those payable under the 2011 Program and the Reversion 2014 Program: Basic TRA, Additional TRA, and Completion TRA. Workers may still participate in remedial or prerequisite training as part of an approved training program and receive TRA during that period.

### **C.7.2. Elimination of 210-Day Requirement**

The 2015 Act does not require a worker to make a bona fide application for training within the later of 210 days of certification or separation, as required under the 2002 Program and the Reversion 2014 program. 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.

## **C.8. Special Rules for Calculating Separations**

**Statute:** Section 233(g) of the 2015 Act reads:

*(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 in Section C.6. of these Operating Instructions, Section 233(a)(2) of the 2015 Act (and of the 2011 Act) establishes a 104-week eligibility period 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 if the worker meets the tenure requirements, described in Section C.1. of these Operating Instructions, in that employment.

Section 233(g) of the 2015 Act (and of the 2011 Act) 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 issued.

In the event of a certification issued as a result of an appeal of a negative determination denying certification, the 104-week 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 Federal Good Cause rules as with any other waivers.

## **C.9. Military Service**

**Statute:** Section 233(i) of the 2015 Act reads:

*(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:** As under the 2011 Act and the 2009 Act, Section 233(i) of the 2015 Act makes returning members of the Armed Forces and National Guard units “whole,” as if the period of military service had not occurred, for the purpose of determining their benefit eligibility. The provision also 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. Upon separation from military service, these workers 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. CSAs must continue 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. 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 provision applies even if the worker enrolls in or begins training after the period of duty.

Accordingly, in administering the 2015 Program, the CSAs must toll all deadlines for all TAA, 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 their Regional Office, and receive the Department’s permission, before waiving any other TAA requirement under Section 233(i).

## **C.10. Waiver of Recovery of Overpayment**

**Statute:** Section 243(a)(1) of the 2015 Act reads:

*(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), [on receipt of payments where fraud is involved], 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:** As under the 2011 Act, and the 2009 Act, Section 243(1) of the 2015 Act requires the Secretary or the CSA to waive recovery of an overpayment of TRA and any other TAA payment under chapter 2 of title II of the Trade Act if “the payment was made without fault” on the worker’s part, and requiring the repayment would cause a financial hardship. Therefore, 20 CFR 617.55(a)(1)(ii) and 20 CFR 617.55(a)(2)(ii) have been superseded by statute and do not apply to the recovery of non-fault overpayments under the 2015 Program (or the 2009 Program or the 2011 Program).

To administer the “financial hardship” waiver criterion, CSAs must provide workers determined to have received TAA overpayments a reasonable opportunity to demonstrate that they were without fault and are unable to repay their TAA overpayments and, therefore, are eligible for waivers of overpayments. The determinations granting or denying waivers of overpayments must be made in accordance with the requirements of Section 243(a)(1) of the 2015 Act, 20 CFR 617.55(a)(2)(i)(A), and 20 CFR 617.55(a)(3) (in response to a request for a waiver determination).

CSAs must develop or use existing procedures under State UI law that substantiate that a financial hardship exists for the individual before issuing a determination that waives the overpayment. CSAs should consider all sources of income, including pensions, UI, social security, disability, rental income, etc. Such items should be measured and compared to existing living expenses such as mortgage or rent, ordinary living expenses such as outstanding debts (including medical debts or credit card debt), and all other expenses (food, utilities, insurance, etc.), and must determine that both conditions, lack of fault and inability to pay, exist before waiving an overpayment. Therefore, it is not

sufficient to determine agency error and rely on unfairness to waive the recovery of the overpayment.

In accordance with 20 CFR 617.51, waiver determinations must be subject to review in the same manner and to the same extent as determinations under the applicable state law.

## **D. TRAINING**

### **D.1. Cap on Funding for Training and Other Activities**

**Statutory Change:** Section 403(b) of the 2015 Act amends Section 236(a)(2)(A) of the 2011 Act to read:

*(2)(A) The total amount of funds available to carry out this Section and Sections 235, 237, and 238 shall not exceed \$450,000,000 for each of fiscal years 2015 through 2021.*

**Administration:** The annual cap on funds available to States under Section 236(a)(2)(A) is \$450 million for each of fiscal years 2015 through 2021. As under the 2011 Act, funding for training, employment and case management services, job search allowances, relocation allowances, and related state administration of these benefits are included under the cap for Training and Other Activities. This consolidation of funds under the cap, instead of separate funding streams to provide each of these benefits and for related state administration, allows CSAs flexibility to use the available funds to provide the best mix of services and benefits for TAA program participants in their respective States. However, this flexibility is limited by Section 235A of the 2015 Act, discussed below in Section G of these Operating Instructions. As under the 2011 Act, Section 235A limits the amount of TAA funds that a State may use for related state administration of the TAA program to a maximum of 10 percent of a State's total annual allocation for the fiscal year; and requires that a state must use a minimum of five (5) percent of a State's total annual allocation of fiscal year funds to provide employment and case management services. Therefore, a CSA:

1. may use more than five (5) percent of its allocation to provide employment and case management services if it determines that more funds are needed to provide such services to adversely affected workers in its State; and
2. may not use more than 10 percent of its allocation for related state administration. The TAA Annual Cooperative Financial Agreement between the Secretary and each State contains the requirements for grants to the states to provide and administer these benefits.

### **D.1.1. Reallotment of Funds**

**Statute:** Section 245(c) of the 2015 Act reads:

(c) *REALLOTMENT OF FUNDS. –*

(1) *IN GENERAL. – The Secretary may –*

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

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

**Administration:** As under the 2011 Act, Section 245(c) of the 2015 Act provides authority for the Department to recapture unexpended TAA funds from States that have not fully used their funding in the second and third fiscal year after the fiscal year in which the funds were provided to the State, and reallocate those funds to other States to provide and administer employment and case management services, training, job search allowances and relocation allowances. The Department may implement Section 245(c) by establishing procedures for recapture of these funds and reallocating them to meet State funding needs for Training and Other Activities.

### **D.2. Pre-Separation Training**

#### **D.2.1. Adversely Affected Incumbent Workers Defined**

**Statute:** Section 247(18) of the 2015 Act reads:

(18) *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, and TEGl No. 22-08 Section D.2.1, the TAARA 2015 restores the provisions of the 2009 Act and the 2011 Act that allow training to be approved for “adversely affected incumbent workers.” “Adversely affected incumbent worker” is defined at Section 247(18) 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 certification of group eligibility under the 2015 Program (and the 2011 Program and the 2009 Program) will cover adversely affected incumbent workers. 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.

The longstanding regulatory notice rule, 20 CFR 617.4(d)(ii), requires the CSA, upon notice of a certification, to notify each adversely affected 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 Secretary/Governor Agreement requires the CSA to also notify those adversely affected incumbent 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 or combined list of workers in the worker group identified on the certification 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**

**Statute:** As under the 2011 Act, Section 236(a)(1) of the 2015 Act includes the phrase “or an adversely affected incumbent worker,” after “adversely affected worker,” in the provision for the approval of training. In doing so, the 2015 Act extends 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 in Section D.2.3. of these Operating Instructions.

**Administration:** This provision allows workers threatened with total or partial separation from adversely affected employment, adversely affected incumbent workers, to begin TAA-approved training before their separation. TAA-funded training for adversely affected incumbent workers, also referred to as, “pre-

separation training” is not the same as incumbent worker training programs allowable under Section 134(a)(3)(A)(iv)(I) of the WIA, 29 U.S.C. 2864(a)(3)(A)(iv)(I) and Section 134(a)(3)(i) of the WIOA, 29 USC 3174(a)(3)(i). The goal of WIA and WIOA incumbent worker training programs is retraining the worker with new skills to allow the worker to continue employment with an employer, as discussed in TEGL No. 03-15. TAA-funded training for adversely affected incumbent workers 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 before a layoff, thereby reducing the period of time needed to complete the training program after the separation occurs, and reducing the duration of the worker’s weeks 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 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 of these Operating Instructions, to ensure that they have the same assistance in developing a reemployment plan and choosing training.

### **D.2.3. Incumbent Worker Exclusions**

**Statute:** Section 236(a)(10) of the 2015 Act reads:

*(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-separation 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 the firm, or appropriate subdivision of the firm, if applicable, that employed the workers in the certified worker



group).

#### **D.2.4. Loss of Threat to Separation**

**Statute:** Section 236(a)(11) of the 2015 Act reads:

*(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 from time to time whether the threat of total or partial separation continues to exist for the duration of the pre-layoff training. This may be accomplished by verifying with the employer that the threat of separation still exists before funding each subsequent portion of the training. 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 CSA may resume funding 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) continue to be met.

The longstanding regulatory rule, 20 CFR 617.22(f)(2), continues to permit a CSA to approve only one training program for a worker per certification. A training program that the worker began before separation as an adversely affected incumbent worker counts as that one training program, and that training plan should be designed to meet the long-term needs of the worker based on the expectation that he or she will be laid off. The training program should also take into account the availability of up to a total of 130 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 and the duration of the training program continues to be limited to a total of 130 weeks.

#### **D.3. Part-time Training**

**Statute:** Section 236(g) of the 2015 Act reads:

*(g) 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:** Section 236(g) 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 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 (but still within the maximum allowable length of training of 130 weeks as discussed in Sections D.4. and D.5.1. of these Operating Instructions) if the worker demonstrates a financial ability to complete the training while not receiving TRA. 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**

As under the 2011 Act, Section 236 of the 2015 Act does not include a specific limitation on the length of an approvable training. However, consistent with the Operating Instructions for the 2009 Program and 2011 Program, we interpret the 2015 Act as allowing the CSA to approve a training program with a maximum length, during which training is conducted, of 130 weeks, which is the maximum number of payable weeks of income support (UI plus TRA).

This limitation aligns the maximum durations of training and income support and reflects the fact that for most workers, the availability of income support is critical to the ability of the worker to complete a training program. However, most workers will not have a full 130 weeks of income support available at the beginning of training; rather, most workers will have used some weeks of income support, such as UI, before the first week in which training occurs. We interpret the 2015 Program as permitting approval of training extending beyond the weeks of TRA available to the individual worker, as described in Section D.5.1. of these Operating Instructions. However, the appropriate length of training will depend on individual circumstances, and Completion TRA is only available to workers whose training program will be completed within the eligibility period discussed in Section C.5.2. of these Operating Instructions.

## **D.5. Approval of Training**

The TAARA 2015 did not change the six criteria for approval of training codified at Section 236(a)(1)(A - G) of the 2011 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 2015 Program, as elaborated upon in the following Sections of these Operating Instructions.

Section 236(a)(1) provides that training be approved 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**

**Statute:** Section 236(a)(9)(B)(i) of the 2015 Act 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:** As under the 2011 Act, Section 236(a)(9)(B)(i) of the 2015 Act provides that, when determining under Section 236(a)(1)(E) whether the worker is qualified to undertake and complete training, the CSA may approve training for a longer period than the worker's period of eligibility of TRA, if the worker demonstrates the financial ability to complete the training after the expiration of

the TRA eligibility period. This Section is consistent with 20 CFR 617.22(a)(5)(ii) and (iii), in permitting training approval where a worker's personal or family resources are adequate to complete training.

This 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. CSAs must not limit training approvals 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.

A training plan which will exceed 130 weeks may not be approved under the 2015 Program.

#### **D.5.2. Reasonable Cost**

**Statute:** Section 236(a)(9)(B)(ii) of the 2015 Act reads:

*(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)(ii) 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. Longstanding rules codified at 20 CFR 617.22(h), 617.25(b)(1)(iii), and 617.25(b)(5)(ii) prohibiting any requirement that a worker use funds personal to the worker to pay for training remain in effect until such time as they are amended through notice and comment rulemaking. We interpret these rules to apply to training that has been determined to be at a reasonable cost. If the worker volunteers to use other funds to supplement the TAA training funds when the cost of training is otherwise not reasonable, and demonstrates that those funds are available, the training program will be approved, if the other

training approval criteria are met. Further, a CSA may not require the worker to obtain other funds as a condition for approval of training.

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.

The Department has not prohibited the limited use of “soft 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 TAA participant 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(a)(6)(iii)(A)-(C). 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 available within the commuting area. When training that is 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 that 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 to obtain suitable employment.

### **D.5.3. Apprenticeship, Higher Education, and WIOA Programs**

**Statute:** Section 236(a)(5) of the 2015 Act reads:

*(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 Innovation and Opportunity Act,*

*(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 Innovation and Opportunity Act .*

**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. 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 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 130 weeks, whichever comes first, while participating in the registered apprenticeship program. Suitable employment as defined in Section 236(e) of the 2015 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, in most cases will 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 if they are employed for at least 20 hours per week. 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 CSAs do use the funds to assist workers to complete such degrees. As under the 2009 Act and the 2011 Act, Section 236(a)(5)(H) of the 2015 Act 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 130 weeks of approved training.

Additionally, WIOA-approved training is an approvable TAA training option under Section 236(a)(5)(B) of the 2015 Act. However, Section 236(a)(5)(H) of the 2015 Act expressly provides that training options available under the TAA

Program are not limited to training programs available under Title I of WIOA.

#### **D.6. On-the-Job Training**

**Statute:** Section 236(c)(1) – (4) of the 2015 Act reads:

- (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:** As under the 2011 Program, CSAs may approve “on-the-job” training (OJT) for a worker meeting the approval criteria of Section 236(a)(1) of the 2015 Act, applying the rule codified at 20 CFR 617.22 (a), and the criteria of



Section 236(c)(1)(B). Note that Criterion (1) (Section 236(c)(1)(B)(i)) requires that the OJT can reasonably be expected to lead to employment with the OJT employer and does not require a guarantee of employment.

The 2009 Act repealed the requirement at Section 236(a)(1) that “[i]nsofar as possible,” training be provided on the job. Therefore, under the 2009 Program, 2011 Program, and 2015 Program, OJT is simply one of several training options for workers.

Further, while the 2002 Program and the Reversion 2014 Program required payment for OJT to be made in equal monthly installments, the Operating Instructions for the 2009 Program, the 2011 Program, and the 2015 Program require only that payment be made on a monthly basis. The 2015 Act expressly limits OJT contracts to no more than 104 weeks. Lastly, the 2015 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 receiving OJT contracts.

#### **D.7. UI and TAA Benefits while in Training, including On-the Job Training**

**Statute:** Section 236(d) of the 2015 Act reads:

*(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:** As under the 2011 Act, the 2015 Act codifies the provisions of current regulations at 20 CFR 617.18 on disqualification of trainees from UI or TRA. The 2015 Act also identifies two additional circumstances under which a CSA may not deny UI or TRA: 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). Section D.6. of these Operating Instructions, provides for the approval of OJT.

#### **D.8. Establishing Training Benchmarks**

CSAs must establish benchmarks at the beginning of the worker's training program, where the approved training program will extend beyond the duration of payable weeks of Basic TRA and Additional TRA, in order to establish eligibility for Completion TRA. In order to ensure workers have access to Completion TRA, if needed, CSAs must establish benchmarks in all but very short-term training, such as a three month certificate program. The establishment of benchmarks is a useful practice and may be required later in the worker's training if unanticipated circumstances arise. Inclusion of benchmarks in the training plan should occur when the training plan is initially established, and, in the unusual event that benchmarks are not included in the initial plan, at any time the plan is amended.

#### **E. JOB SEARCH ALLOWANCES**

The TAARA 2015 may significantly change a State's administration of job search allowances. The TAARA 2015 restores the flexibility in State administration available under the 2011 Act by allowing CSAs to decide whether to offer workers the opportunity to apply for job search allowances, in accordance with the amounts of allowance and maximum payment conditions described in the Section below. The decision to offer job search allowances must be made by a CSA before the State provides benefits and services under the 2015 Program. This benefit must continue to be made available to workers certified under the petition series TA-W-69,999 and below (and 2002 participants under series TA-W-80,000-80,999) for the 2002 Program; TA-W-70,000-79,999 for the 2009 Program; and TA-W-85,000-89,999 for the Reversion 2014 Program, in accordance with guidance for those Programs. The CSA should submit written notice of the decision to the appropriate ETA Regional Office. If the CSA begins to provide job search allowances to workers under the 2015 Program, the CSA may not later decide to eliminate that benefit.

**Statute:** Section 237(a) of the 2015 Act reads:

*(a) JOB SEARCH ALLOWANCE AUTHORIZED. –*

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

**Statute:** Section 237(b) of the 2015 Act reads:

*(b) AMOUNT OF ALLOWANCE. –*

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

*(2) MAXIMUM ALLOWANCE. – Reimbursement under this subsection may not exceed \$1,250 for any worker.*

**Statute:** Section 237(c) of the 2015 Act reads:

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

**Administration:** As under the 2011 Program, job search allowances are no longer entitlements for workers who meet the eligibility requirements under the 2015 Program. Instead, CSAs have discretion to make a one-time decision whether to offer job search allowances as a benefit for workers served under the 2015 Program. In addition, CSAs receive allocations for Training and Other Activities that may be used for training, job search allowances, relocation allowances, case management and employment services, and related state administration costs.

The 2015 Program retains the discretion of the Secretary to prescribe regulations for the reimbursement of the cost of necessary job search expenses, but provides that the amount of the allowance may reimburse the worker for “not more than 90 percent” of such expenses. The regulations governing the administration of job search allowances published at 20 CFR 617.30 through 617.35 remain in effect until such time as they are amended through notice and comment rulemaking to address the statutory change in Section 237(c) of “90 percent” to “not more than 90 percent.” The regulation codified at 20 CFR 617.35(a) provides for the computation of the amount of a job search allowance as “90 percent of the total costs, including each of the following allowable transportation and subsistence items” enumerated in that regulation. Because that regulation is not inconsistent with the 2015 Program, it will continue to apply to job search allowances issued under the 2015 Program where states choose to offer them as a benefit. However, because the 2015 Program provides a higher maximum reimbursement amount for a job search allowance, the “\$800” in Section 617.34(b) must be applied as if it read “\$1,250.”

## F. RELOCATION ALLOWANCES

The TAARA 2015 may significantly change a State's administration of relocation allowances. The TAARA 2015 restores the flexibility in State administration available under the 2011 Act by allowing CSAs to decide whether to offer workers the opportunity to apply for relocation allowances, in accordance with the amounts of allowance and maximum payment conditions described in the Section below. The decision to offer relocation allowances must be made by a CSA before the State provides benefits and services under the 2015 Program. This benefit must continue to be made available to workers certified under the petition series TA-W-69,999 and below (and 2002 participants under series TA-W-80,000-80,999) for the 2002 Program; TA-W-70,000-79,999 for the 2009 Program; and TA-W-85,000-89,999 for the Reversion 2014 Program, in accordance with guidance for those Programs. The CSA should submit written notice of the decision to the appropriate ETA Regional Office. If the CSA begins to provide relocation allowances to workers under the 2015 Program, the CSA may not later decide to eliminate that benefit.

**Statute:** Section 238(a) of the 2015 Act reads:

*(a) RELOCATION ALLOWANCE AUTHORIZED. –*

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

**Statute:** Section 238(b) of the 2015 Act reads:

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

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

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

**Administration:** As under the 2011 Program, relocation allowances are no longer entitlements for workers who meet the eligibility requirements under the 2015 Program. Instead, CSAs have discretion to make a one-time decision

whether to offer relocation allowances as a benefit for workers served under the 2015 Program. In addition, states will no longer receive separate funds for relocation allowances, but will receive allocations for Training and Other Activities that may be used for training, job search allowances, relocation allowances, case management and employment services, and related state administration costs.

The 2015 Program retains the discretion of the Secretary to prescribe regulations for the reimbursement of the cost of necessary expenses, but provide that the amount of the allowance may reimburse the worker for “not more than 90 percent” of such expenses and a lump sum equivalent to three times the worker’s average weekly wage, up to a maximum payment of \$1,250. The regulations governing the administration of relocation allowances published at 20 CFR 617.40 through 617.48 remain in effect until such time as they are amended through notice and comment rulemaking to address the statutory change in Section 237(c) of “90 percent” to “not more than 90 percent.” Sections 617.45 through 617.48 provide for the computation of the amount of a relocation allowance as 90 percent of allowable items reduced by any amount the individual is entitled to be paid or reimbursed for such expenses from any other source, and defines the items allowable, the computation of the travel allowance, and the computation of the moving allowance. Because those regulations are not inconsistent with the 2015 Program, they will continue to apply to relocation allowances issued under the 2015 Program where states choose to offer them as a benefit. However, because the 2015 Program provides a higher maximum reimbursement amount for a relocation allowance, the “\$800” in Section 617.45(a)(3) must be applied as if it read “\$1,250.”

## **G. EMPLOYMENT AND CASE MANAGEMENT SERVICES**

### **G.1. Provision of Services**

**Statute:** Section 235 of the 2015 Act reads:

#### *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:** Like the 2009 Act and the 2011 Act, the 2015 Act **requires** that employment and case management services be offered to all adversely affected workers and adversely affected incumbent workers and both authorizes and requires the use of a minimum of five (5) percent of the fiscal year appropriation of TAA funds to provide those services. The required services may be provided by staff funded by allocations to the states for Training and Other Activities, as discussed in Section D.1. of these Operating Instructions, or by staff funded under partner programs in the one-stop delivery system as defined in Section 3

of the WIOA, although a minimum of five (5) percent of TAA funds must be used to provide these services, as discussed in Section G.2. of these Operating Instructions.

As discussed in TEGL No. 3-15 *Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services*, co-enrollment or multiple-enrollment in WIOA partner programs allows workers covered by TAA petitions and workers in groups certified under TAA petitions to receive supportive services that may assist them in making a quicker transition to new employment. It is vitally important that CSAs develop a goal, or informal deadline, for administering an assessment of workers to determine their training and reemployment needs. This will provide data for State officials to make a more accurate employability determination and issue TAA waivers of training. Early assessment also will give case management staff the information necessary to advise, counsel, and refer participants to the appropriate partner/training provider. Many CSAs 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 WIOA 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 toward evaluating whether the worker meets the TAA training criteria or matches up to specific career opportunities in the community. The Individual Employment Plan (IEP) must use and be guided by the results of the skill assessments. The IEP should, in turn, lead to support for finding suitable employment and 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. Follow up career counseling and other informational resources must also be available after an individual completes training, through his or her reemployment and exit from the TAA Program.

CSAs must eliminate stand-alone employment and case management structures for TAA Program participants where these services are available within the workforce development system. 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. Section II.B of the current Governor-Secretary Agreement continues to apply until a new agreement is executed. The current agreement provides that: "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 [now WIOA]. The State will use one-stop career centers as the main point of participant intake and delivery of benefits and services." The TAA Program continues to be a required partner in the comprehensive one-stop system established under Section 121(b)(1)(B)(viii) of the WIOA. As provided in Section 512 (HH)(4) of the WIOA, the references to provisions of the WIA required for agreements with the Secretary have been superseded by corresponding provisions of the WIOA.

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 WIOA staff to align resources and develop clear plans for coordination, in accordance with current and anticipated further guidance from the Department.

## **G.2. Funding**

**Statute:** Section 235A of the 2015 Act reads:

*SEC. 235A. LIMITATIONS ON ADMINISTRATIVE EXPENSES AND EMPLOYMENT AND CASE MANAGEMENT SERVICES.*

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

*(1) not more than 10 percent for the administration of the trade adjustment assistance*



*for workers under this chapter, including for--*

- (A) processing waivers of training requirements under Section 231;*
  - (B) collecting, validating, and reporting data required under this chapter; and*
  - (C) providing reemployment trade adjustment assistance under Section 246; and*
- (2) not less than 5 percent for employment and case management services under Section 235.*

**Administration:** CSAs are once again required to make employment and case management services available to adversely affected workers and adversely affected incumbent workers. These services may be provided using TAA funds or through agreements with partner programs. CSAs will receive allocations of fiscal year funds that may be used for training, job search allowances, relocation allowances, employment and case management services, and related state administration costs. CSAs must use at least five (5) percent of the fiscal year funds to provide employment and case management services to workers in worker groups covered under certified TAA petitions. Therefore, a CSA may use more than five (5) percent of its allocation to provide employment and case management services if it determines that more funds are needed to provide such services to adversely affected workers in its State. However, case management expenditures should be consistent with providing effective services to adversely affected workers and increasing performance outcomes. The percentage of funds used for employment and case management services, greater than five (5) percent, must be reasonable and proportional to the number of adversely affected workers served in the state.

In addition to staff costs for career counselors, employment and case management services funds may be used for: assessment tests; skills transferability analysis; peer counselors; development and provision of labor market information; follow-up services; maintenance and enhancement of electronic case management systems to allow for improved case management services, including improvements to integrate customer intake with WIOA or changes due to the implementation of the 2015 Program; information on available training; and, any other staff costs related to case management. This list is not intended to be all inclusive.

The employment and case management services funding addressed in this Section supplements, and does not offset, any funds that the CSA would otherwise receive under WIOA or any other program to provide the same or similar services to workers covered by TAA petitions or in worker groups covered by a certified TAA petition.

### **G.3. State Advice, Outreach, and Employment and Case Management Responsibilities, including Coordination with WIOA**

**Statute:** Section 239(g) of the 2015 Act reads:

- (g) Each cooperating State agency shall, in carrying out subsection (a)(2)-*
- (1) advise each worker who applies for unemployment insurance of the benefits under this chapter and the procedures and deadlines for applying for such benefits,*
  - (2) facilitate the early filing of petitions under Section 221 for any workers that the agency considers are likely to be eligible for benefits under this chapter,*
  - (3) advise each adversely affected worker to apply for training under Section 236(a) before, or at the same time, the worker applies for trade readjustment allowances under part I of subchapter B,*
  - (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 CSAs under Section 239 of the 2015 Act, the CSAs must advise UI claimants of the TAA Program and the procedures and deadlines for applying for TAA benefits; assist in the early filing of petitions; advise each adversely affected worker to apply for training at the time or before the worker applies for TRA; administer outreach, intake, and orientation for adversely affected workers and adversely affected incumbent workers; and make employment and case management services, as described in Section 235, available to workers. If the TAA Program funds allocated to the States to provide Training and Other Activities, including 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 WIOA 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. For further guidance on TAA coordination with WIOA, please refer to TEGL No. 3-15, until additional guidance is issued on the integration of TAA and WIOA programs.

## H. REEMPLOYMENT TRADE ADJUSTMENT ASSISTANCE (RTAA)

### H.1. Background

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. The CSAs must apply these interpretations in determining RTAA eligibility for applicants covered by the 2009 Program, the 2011 Program, as well as the 2015 Program participants, effective as of the date of the issuance of these Operating Instructions. These new interpretations address:

- (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.

To apply these new interpretations of RTAA eligibility criteria as soon as possible after issuance of this guidance, whether the applicant is covered by the 2009 or 2011 Program, had been covered by Reversion 2014 (until September 28, 2015), or is covered by the 2015 Program, CSAs must: inform all appropriate staff, including the appellate divisions of the State UI agency, of the availability of RTAA to a full-time worker enrolled in TAA-funded training at the time of application for this benefit; and take appropriate action to apply this criterion going forward in all determinations; redeterminations; and appeals of denials of RTAA benefits issued before implementation of this guidance in accordance with 20 CFR 617.50(c) and 20 CFR 617.51.

**Statute:** Section 246(a)(1) of the 2015 Act reads:

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

**Administration:** The TAARA 2015 restores RTAA as a wage supplement option available to older workers under the TAA Program. RTAA replaced ATAA, which provided wage supplements as an option for reemployed older workers as a demonstration project under the 2002 Program and the Reversion 2014 Program. Rather than a demonstration program, RTAA is permanent, and has the same expiration date as the rest of the TAA Program.

ATAA remains available to workers who choose to remain an ATAA recipient (as described in Section A.2.4.4. of these Operating Instructions) under the petition series TA-W-85,000-89,999, even though they transition to the 2015 Program on September 28, 2015.

## **H.2. Group Eligibility**

**Statute:** Section 246(a)(3)(A) of the 2015 Act reads:

*(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 TAARA 2015 provides that workers in a group certified as eligible to apply for TAA are also eligible to apply for RTAA.

## **H.3. Individual Eligibility**

**Statute:** Section 246(a)(3)(B) of the 2015 Act reads:

*(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 \$50,000 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:** As under the 2011 Act, the RTAA program under the 2015 Act eliminates the ATAA requirement that the worker obtain full-time employment within 26 weeks of separation from adversely affected employment, maintains the maximum wages an individual may earn in reemployment at \$50,000, and 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 earn more than \$50,000 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 - The participant must:
  - 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 CSA must issue a definition of full-time employment for RTAA purposes. The CSA will verify reemployment in accordance with State policies; **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 statutory requirement in Section 236(g) of the 2009 Act, the 2011 Act, and the 2015 Act 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. The verification will be conducted in accordance with State policies in the same manner used for verifying employment for RTAA eligibility and for verifying participation in training under the 2009 and 2011 Programs.
4. The worker cannot return to employment at the "firm" from which the worker was separated. As under the 2011 Act, the 2015 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 that was not the subject of the certification. 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 under the 2011 Program and the 2009 Program, under the 2015 Program the CSA must issue a written determination on an RTAA application within five

working days of its receipt. If approved, the CSA must 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 that 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 \$50,000 annual limit for reemployment wages.

Qualifying employment that was commenced before the date of separation from adversely affected employment may be considered qualifying employment for purposes of determining RTAA eligibility.

### **H.3.1. RTAA Eligibility and UI Exhaustion for those Close to 50**

TEGL No. 10-11, Change 2, Question 9 (Q9) states that, “workers who have become employed before they reach the age of 50 may be determined eligible for RTAA when they reach age 50 during such employment if they meet all the other RTAA eligibility requirements.” Past guidance did not address the effect of the statutory eligibility period, Section 246(a)(4), on determinations of RTAA eligibility when a worker reaches age 50 after obtaining RTAA qualifying reemployment. This guidance establishes that, while the individual need not be age 50 or older when obtaining RTAA qualifying reemployment, RTAA eligibility requires that the benefit be payable within the eligibility period established in accordance with Section 246(a)(4).

As described in Section H.4. of these Operating Instructions, the eligibility for RTAA depends in part on whether or not the worker has received TRA.

A worker who has not received TRA may receive RTAA benefits for a period not to exceed two years beginning on the earlier of:

1. The date on which the worker exhausts all rights to UI as defined at 20 CFR 617.3(o); or
2. The date on which the worker obtains reemployment.

A worker who has received TRA may receive RTAA benefits for a period of 104 weeks beginning on the date which the worker obtains reemployment reduced by the total number of weeks the individual received TRA.

The controlling variables in both situations are:

1. Exhaustion of the worker's UI entitlement; or
2. The date the worker obtains reemployment.

To make the RTAA determination, the CSA will need to know the applicable dates for the worker: the date of reemployment and either the date the worker exhausted all rights to UI, or the dates the worker began and ended receipt of TRA before the date of reemployment. These dates must occur within the 104-week, or two-year, eligibility period identified in the statute. If a worker reaches age 50 after the applicable statutory eligibility period, the CSA may not approve RTAA for that worker even if at that time the worker met the other eligibility conditions of Section 246(a)(3)(B)(ii), (iii), and (iv).

### **H.3.2. Reinterpretation of Full-time Work, Part-time Work, and Full-time Training as Allowable under RTAA**

The TGAAA first established the individual eligibility requirements for RTAA in 2009 under Section 246(a)(3)(B) of the 2009 Act, and neither the TAAEA nor the TAARA 2015 amended this clause. Section 246(a)(3)(B) lists four requirements for reemployment. Section 246(a)(3)(B)(iii)(I) and (II) address two conditions under which the employment is qualifying and the effect of the worker's enrollment in a training program approved under Section 236 of the Trade Act on the receipt of RTAA. Item (I) requires full-time employment when the worker is not enrolled in TAA training; and item (II) requires employment "at least 20 hours per week" when the worker is enrolled in TAA training. Under TEGL No. 22-08, the Department interpreted these provisions as allowing a worker in part-time employment of at least 20 hours a week who is enrolled in TAA-approved training to be eligible for RTAA, while not allowing RTAA for a worker in full-time employment who is enrolled in TAA-approved training.

The Department's intent was to allow workers in part-time employment to receive RTAA while they are enrolled in training. However, full-time employment as defined in State law always exceeds 20 hours per week and generally covers employment from 35-40 hours per week. Therefore, the "at least" language in clause (II) may be read to refer to any number of hours over 20, which means that **both part-time employees, as well as full-time employees, who are enrolled in TAA training may be eligible for RTAA.** This reading avoids providing a disincentive for workers working full-time considering enrolling in TAA-approved training. To interpret this provision in the best interests of older adversely affected workers enrolled in TAA-approved training, these Operating Instructions revise the prior interpretation of this provision contained in TEGL No. 22-08 and allow full-time workers enrolled in TAA training as well as part-time workers enrolled in TAA training to be eligible for

RTAA. This new interpretation of Section 246(a)(3)(B)(iii)(II) will be applied to both RTAA participants and RTAA applicants as of the issuance of these Operating Instructions.

This guidance also rescinds the guidance issued in TEGL No. 22-08 and 10-11, Change 1, Section G.1., prohibiting a worker employed full-time and enrolled in training from qualifying for RTAA. Accordingly, a worker who is in full-time OJT at the time of application for RTAA and, therefore, is both employed full-time and enrolled in TAA training may be eligible for RTAA, just as a worker in part-time OJT at the time of application for RTAA may qualify for RTAA. This interpretation provides a greater opportunity for RTAA recipients to receive RTAA while in an OJT or in a registered apprenticeship program.

### **H.3.3. Definition of Firm**

To determine that a worker is eligible for RTAA, the CSA must make a finding that the employment obtained by the worker is not at the “firm” from which the worker was separated, that is, the “firm” identified in the certification. The term “firm” is defined at Section 247(3) of the 2009 Act, the 2011 Act, and the 2015 Act to include “an appropriate subdivision thereof.” The Department interpreted this requirement in TEGL No. 22-08, Section H.3. as requiring that the CSA must determine what constitutes the “firm” for purposes of determining RTAA eligibility on a case-by-case basis, depending on the certification. A certification may cover one or more worker groups at either an entire firm or one or more subdivisions of a firm located in one or several States. Accordingly, if the certification is issued for a worker group in an appropriate subdivision of a firm, a worker in that group may not be eligible for RTAA upon a return to employment with that subdivision, but may be eligible for RTAA upon a return to employment at another subdivision of a firm. If, however, the certification is issued for a group of workers composed of all workers in the entire firm, or does not identify a subdivision, the worker may not be eligible for RTAA based on a return to employment in any subdivision of that firm.

The definition of “firm” codified at 29 CFR 90.2, the regulations governing petitions and determinations, applies in determining whether this eligibility criterion has been met because that definition is used by the Department in identifying the “firm” in the certification. Under the regulatory definition, a firm “includes an individual proprietorship, partnership, joint-venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons,



may be considered a single firm.” A firm may be considered a successor-in-interest to another firm, if most or all of the following factors are present:

- There is continuity in business operations
- There is continuity in location
- There is continuity in the workforce
- There is continuity in supervisory personnel
- The same jobs exist under similar conditions
- There is continuity in machinery, equipment, and process
- There is continuity in product/service

In making its determination, the CSA should first review the certification under which the worker was covered, and look for any amendments to the certification, and compare the name and address of the firm in the certification to the name and address of the firm in which the worker has found reemployment. Then the CSA should consider, whether some or all of those factors, identified above, exists to determine whether the firm at which the worker found reemployment is a “successor-in-interest” to the firm from which the worker was separated. The CSA may need to obtain further information about the firm from the employer to make that determination. If the CSA determines that the worker returned to employment with a successor-in-interest to the firm from which the worker was separated, then the worker is not eligible for RTAA. The determination must be made based on the individual application of the worker.

#### **H.4. Eligibility Period**

**Statute:** Section 246(a)(4) of the 2015 Act reads:

*(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:** As under the 2011 Act and the 2009 Act, the 2015 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 the date of 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. 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. A “qualifying separation” is defined at 20 CFR 617.3(t)(2) to mean a separation from adversely affected employment within the certification period for which an individual qualifies as an adversely affected worker, and for Basic TRA, any total separation of the individual.

The statutory phrase “worker exhausts all rights to unemployment insurance based on the separation of the worker from...adversely affected employment...” must address the situation where a worker has 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 uses the last separation because that separation is the one that triggers the worker’s application for RTAA. 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, where wages at separation are defined as the annualized hourly rate at the time of the most recent separation, as explained in Section H.7. of these Operating Instructions.

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 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 payments may be made where appropriate. Note: Be sure to review Section H.3.1. of these Operating Instructions for clarification on eligibility for those close to 50.

### **H.5. Total Amount of Payments**

**Statute:** Section 246(a)(5) of the 2015 Act reads:

(5) *TOTAL AMOUNT OF PAYMENTS.* –

(A) *IN GENERAL.* – *The payments described in paragraph (2)(A) made to a worker may not exceed –*

(i) *\$10,000 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) *\$10,000, 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:** As under the 2011 Act and the 2009 Act, the 2015 Act provides two separate calculations of the maximum amount of RTAA 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 \$10,000 during the eligibility period described in Section H.4. of these Operating Instructions. This is the same as 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 \$10,000 and the ratio of the number of weeks in the eligibility period described in Section H.4., above, and 104.

The two-step formula set forth below (as described in TEGL No. 22-08, Change 1, Section A.1) clearly demonstrates how the maximum amount of RTAA that may be paid decreases as the number of TRA weeks received increases. The following example demonstrates the computation of RTAA eligibility for a worker who has received 26 weeks of TRA. The formula used below would be adjusted for a worker who received a different number of weeks of TRA.

**Determining Eligibility Period**

<b>104 Week Maximum</b>	<b>Weeks of TRA Received</b>	<b>Eligibility Period (x)</b>
104	- 26	= 78

**Determining Maximum RTAA Benefit**

<b>Factors</b>	
x	Eligibility Period
y	104 Weeks
z	\$10,000

<b>Ratio</b>	
x/y	= Ratio

<b>Formula</b>	
(x/y) * z	= RTAA Benefit
<b>ratio * \$10,000 = RTAA Benefits</b>	

<b>Example</b>
(78/104) * \$10,000 = \$7,500

Applying the formula would result in an eligibility period of 78 weeks, during which the participant could collect up to \$7,500 of RTAA. Note that RTAA is reduced only by the number of weeks for which the worker received TRA. Receipt of UC or EB is not considered in determining the amount of RTAA.

**H.6. Continuing Eligibility**

As under the 2011 Act and the 2009 Act, under the 2015 Act a worker who is approved for the RTAA program and who continues to meet the eligibility

criteria will be paid RTAA benefits until the end of the eligibility period or the payment of \$10,000, 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 CSAs 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 application for RTAA upon reemployment. The worker would be eligible for the remaining RTAA benefits to which he or 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 exceed \$50,000 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.
- The worker has received the maximum amount of RTAA.
- The worker has reached the end of the RTAA eligibility period.

A worker who is working part-time and is enrolled in TAA-approved training will be excused from the training requirement for any week for which she or 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.

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 \$50,000. Annual wage calculations include all jobs in which the worker is employed.

### **H.7. RTAA Payments**

**Statute:** Section 246(a)(2) of the 2015 Act reads:

(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.*

Section 246(a)(6) of the 2015 Act reads:

(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 and 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 basic calculation of the RTAA benefit amount is 50 percent of the difference between a worker's wage at the time of separation and the worker's wage from reemployment. 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. The annualized wages are computed by multiplying the worker's hourly rate received during the last full week of his or 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.

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.

For workers who meet the reemployment requirements described in Section H.3. of these 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 in Sections H.7.1 and H.7.2.

RTAA may be paid on a weekly, biweekly, or other payment frequency not longer than monthly, as established by the CSA, and the total payment may not exceed the \$10,000 maximum over the worker’s RTAA eligibility period.

### Wage Calculation Methodology

#### Factors

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 $h = (\text{current hours per week} / \text{old hours per week})$

**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: (hourly rate \* 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 initially must reflect those of the first full week of reemployment, although this number will change if the new wages change: (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**

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

**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.

Monthly	$(o - n) * .50$
Benefit Equals	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.

Monthly	$((o - n) * h * .50)$
Benefit Equals	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 hours per week with annualized separation wage of \$50,000 per year. The participant obtained full-time employment, making \$20,000 per year.

o = \$50K	n = \$20K
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**Option 1- Full-Time Employment**

Monthly	$(\$50K - \$20K) * .50$	= \$1250 Per Month
Benefit Equals	12	



**Option 2 - Part-Time Employment**

RTAA participant was working 40 hours 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	n = \$20K	h = (20/40)
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Monthly Benefit Equals	$(\$50K - \$20K) * (20/40) * .50$	= \$625 Per Month
	12	

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 using the new wages and hours 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 \$50,000 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**

**Statute:** Section 246(a)(2)(B)-(C) of the 2015 Act reads:

*(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\_246(a)(7) of the 2015 Act reads:

*(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. The 2015 Act provides a way 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 way for a worker to move from RTAA back to TRA.

With respect to HCTC, guidance will be provided separately, as the HCTC Program is implemented by the IRS, as explained in Section J of these Operating Instructions.

## **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 for that benefit history is the same as what is required for ATAA.

## **I. STATE OPERATIONS**

### **I.1. Alien Verification**

**Statute:** Section 239(k) of the 2015 Act 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:** Since the enactment of the 2009 Act, CSAs have been 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 CSA 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 the Act’s requirement, CSAs must continue to use the SAVE program to alert the staff responsible for processing applications to the expiration of satisfactory immigration status during the time the individual is potentially eligible for benefits, so that the CSAs are able to determine that the expiration date has been changed or the alien is no longer eligible for TAA. CSAs are also encouraged to modify 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 2015 Act requires that CSAs 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.

No further action is required unless the alien’s satisfactory immigration status expires. When a worker’s satisfactory immigration status expires, that worker is no longer entitled to TAA benefits and services. The CSA should notify the worker that no further TAA benefits and services may be provided after the expiration date.

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**

**Statute:** Section 239(i) of the 2015 Act 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 Section, which has been in effect since the enactment of the TGAAA, 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 verify 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, ATAA and RTAA, job search and relocation, and employment and case management services.

To comply with this continuing provision in the 2015 Act, the CSA must have a formal monitoring program in place 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 and share best practices, identify and correct deficiencies, and identify and address staff training needs. Case files reviewed must include files for workers certified under the 2002, 2009, 2011, Reversion 2014, and 2015 Programs, as long as there are participants of those Programs being reported as served. For example, if there are no 2002 Program participants being reported, and no 2015 Program participants have been enrolled, the CSA will review case files from participants being reported and served under the 2009, 2011, Reversion 2014, and 2015 Programs. 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 make sure it is sufficient to ensure the accuracy and verifiability of such data.

### **I.3. Data Reporting**

**Statutory Change:** Section 404 of the 2015 Act amends Section 239(j) to read:

*(j) Performance Measures. –*

*(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 an annual basis comprehensive performance accountability measures, to consist of –*

*(A) the primary 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 that promote efficiency and effectiveness.*

*(2) indicators of performance. –*

*(A) Primary Indicators of Performance. –*

*(i) IN GENERAL. – The primary indicators of performance referred to in paragraph (1)(A) shall consist of –*

*(I) the percentage and number of workers who received benefits under the trade adjustment assistance program who are in unsubsidized employment during the second calendar quarter after exit from the program;*

*(II) the percentage and number of workers who received benefits under the trade adjustment assistance program and who are in unsubsidized employment during the fourth calendar quarter after exit from the program;*

*(III) the median earnings of workers described in subclause (I);*

*(IV) the percentage and number of workers who received benefits under the trade adjustment assistance program who, subject to clause (ii), obtain a recognized postsecondary credential or a secondary school diploma or its recognized equivalent, during participation in the program or within 1 year after exit from the program; and*

*(V) the percentage and number of workers who received benefits under the trade adjustment assistance program who, during a year while receiving such benefits, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable gains in skills toward such a credential or employment.*

*(ii) Indicator relating to credential. – For purposes of clause (i)(IV), a worker who received benefits under the trade adjustment assistance program who obtained a secondary school diploma or its recognized equivalent shall be*

*included in the percentage counted for purposes of that clause only if the worker, in addition to obtaining such a diploma or its recognized equivalent, has obtained or retained employment or is in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program.*

*(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 Measures. – In preparing the annual 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 measures reported are valid and reliable.*

*(4) Accessibility of State Performance Reports. – The Secretary shall, on an annual basis, make available (including by electronic means), in an easily understandable format, the reports of cooperating States or cooperating State agencies required by paragraph (1) and the information contained in those reports.*

**Administration:** Section 239(j) of the 2015 Act establishes five primary indicators of performance for TAA participants. These changes align the TAA Program performance indicators with those mandated under the WIOA. Accordingly, the changes to TAA performance indicators will not be immediately implemented, but will be implemented along with WIOA procedures as part of an integrated reporting process. Additional guidance will be issued to describe this process, and no action is needed by CSAs until that guidance is issued.

Until the new primary indicators of performance are implemented, quarterly outcome data is still required as part of the overall effort to improve the TAA Program, its performance, and worker outcomes. CSAs must continue to submit the following until the Department issues superseding forms and guidance: TAPR (OMB Control No. 1205-0932) in accordance with TEGL No. 17-05; TEGL No. 6-09 and its Changes 1 and 2; TEGL No. 15-10; TEGL No. 06-14 and future TEGLs addressing Data Validation and Performance Reporting Requirements and Associated Timelines; and TEGL No. 04-14.

## **J. HEALTH COVERAGE TAX CREDIT**

Section 407 of the TAARA 2015 retroactively extends the 72.5 percent health coverage tax credit, Section 35(b) of the Internal Revenue Code of 1986, as amended, through December 31, 2019, for eligible TRA and ATAA/RTAA recipients in the TAA Program. The IRS is currently reviewing the recently passed legislation and expects to provide guidance shortly. Check this IRS Webpage for updates: <http://www.irs.gov/HCTC>.