

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL ONR
	DATE August 6, 2003

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 2-03

TO: ALL STATE WORKFORCE AGENCIES  
ALL STATE WORKFORCE LIAISONS

FROM: EMILY STOVER DeROCCO  
Assistant Secretary



SUBJECT: Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002

1. Purpose. To transmit interim operating instructions for implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program established by the Trade Adjustment Assistance Reform Act of 2002.
2. References. The Trade Act of 1974 (Pub. L. 93-619, as amended), the Trade Act of 2002 (Pub. L. 107-210); the Workforce Investment Act of 1998; 20 CFR Part 617; 29 CFR Part 90; TEGL No. 11-02; UIPL No. 24-03. The amendments to the Trade Adjustment Assistance ("TAA") program may also be referred to as the Trade Adjustment Assistance Reform Act of 2002 ("the Act" or "the Trade Act"). These amendments were included in Title I of the Trade Act of 2002.
3. Background. The Act establishes ATAA as an alternative assistance program for older workers certified eligible to apply for Trade Adjustment Assistance. This program is effective for petitions filed on or after August 6, 2003. The Act requires that petitioners who request that workers be certified for the ATAA program must do so at the time the petition is filed. ATAA is designed to allow TAA eligible workers for whom retraining may not be appropriate and who find reemployment to receive a wage subsidy to help bridge the salary gap between their old and new employment. To receive the ATAA benefits, workers must be TAA and ATAA certified.

Under the ATAA program, workers in an eligible worker group who are at least 50 years of age and who obtain different, full-time employment within 26 weeks of separation from adversely-affected employment at wages less than those earned in the adversely-affected employment, may receive up to half of the difference between the worker's old wage and the new wage. The wage subsidy may be paid up to a maximum of \$10,000 during a two-year eligibility period. To be eligible for the ATAA program, workers may not earn more than \$50,000 per year in the new employment. In addition, the worker group must be certified as eligible to apply for TAA benefits and meet other ATAA eligibility criteria listed below. Workers who begin receiving payments under the ATAA program cannot receive other TAA benefits and services except for relocation

RESCISSIONS	EXPIRATION DATE Continuing
-------------	-------------------------------

allowances and the Health Coverage Tax Credit (HCTC).

4. Guiding Principle for ATAA Implementation. It is essential that the Department of Labor (“DOL”), State Workforce Agencies (“SWA”), local One-Stop Career Center partners and other mission critical partners work together to move trade-affected workers into new jobs as quickly and effectively as possible. To this end, the primary focus of ATAA reemployment benefits and services will be toward rapid, suitable and long-term employment for adversely affected older workers served by the program.

5. Operating Instructions. The operating instructions are being issued by DOL as the administrator of the TAA program. As agents of the Secretary of Labor, the states and cooperating state agencies may not vary from the operating instructions in this document without prior approval from DOL.

Pending the issuance of regulations implementing the provisions of the Act, these operating instructions constitute the controlling guidance to the states and the cooperating state agencies for implementing and administering the ATAA program, under the agreements between the states and the Secretary of Labor under Section 239 of the Act.

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

1. The “Act” or the “Trade Act” means the Trade Act of 1974, including the 2002 Amendments set forth in P.L. 107-210
2. “DOL” means the U.S. Department of Labor
3. “ETA” means the Employment and Training Administration
4. “Secretary” means the Secretary of Labor
5. “TAA” means the Trade Adjustment Assistance program for workers
6. “TRA” means Trade Readjustment Allowances
7. “ATAA” means Alternative Trade Adjustment Assistance program
8. “HCTC” means Health Coverage Tax Credit
9. “WIA” means the Workforce Investment Act of 1998
10. “SWA” means State Workforce Agency
11. “DTAA” means the Division of Trade Adjustment Assistance

#### A. PETITIONING PROCESS

Workers who seek the benefits and services available under the ATAA program must file a regular TAA petition which includes a request that the worker group be considered for eligibility to apply for the ATAA program. Section 246(a)(3)(A)(i) of the Trade Act states, “The Secretary shall provide the opportunity for a group of workers on whose behalf a petition is filed under section [221] to request that the group of workers be certified for the alternative trade adjustment assistance program under this section at the time the petition is filed.” Petition forms that are currently available do not provide for such a request. Until revised petition forms are approved by the Office of Management and Budget (OMB) and become available for use, we have developed a

supplemental form (attachment A) which may be used in the interim by petitioners seeking certification to apply for the ATAA program. This supplement may be provided by the states or may be accessed online at <http://www.doleta.gov/tradeact/petitions.cfm>. Petitioners are not required to use the supplemental form. However, the information requested on the supplemental form must be provided in order for a petitioner to be considered for eligibility under the ATAA program. Failure to submit the supplementary information with the petition means that DOL will not consider the worker group for certification under the ATAA program. A Federal Register Notice was published on July 7, 2003, seeking comments on the new form for the TAA program. Until the new form is approved, the process established for interim use will remain in effect.

In all other respects, the petition for TAA, together with the supplemental form for the ATAA program, must meet all of the requirements for all TAA petitions. These requirements are set forth in regulations at 29 CFR Part 90. Additional requirements are set forth in Training and Employment Guidance Letter (TEGL) No. 11-02, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002," issued on October 10, 2002, and published in the Federal Register on November 14, 2002 (67 FR 69029).

#### B. INVESTIGATION PROCESS

In order to establish that petitioning workers are eligible to apply for the ATAA program, DOL must first determine that all of the criteria for a regular TAA certification, as described in TEGL 11-02, are met. In addition, DOL must find that three additional criteria are met for ATAA certification. These additional criteria are:

1. A significant number of adversely affected workers in the petitioning workers' firm are 50 years of age or older;
2. The adversely affected workers in the petitioning workers' firm possess job skills that are not easily transferable to other employment; and
3. The competitive conditions within the affected workers' industry are adverse.

Obtaining data and other information necessary to determine that all three of these criteria are satisfied will be part of the normal petition investigation process conducted by the Division of Trade Adjustment Assistance (DTAA). Workers may transmit data with their petition for any or all of these criteria, which will be considered by DTAA in making its determination.

For criterion 1, information will be obtained by telephone communication with the appropriate company official from the subject firm as part of DTAA's investigation. For this purpose, the term "significant number" means five percent of the adversely affected workforce or 50 workers, whichever is less, or at least three workers in a firm with less than 50 adversely affected workers.

For criterion 2, the necessary information will also be obtained through telephone communication with the appropriate company official at the subject firm. Specifically, the company official will be asked to confirm that the worker group for whom a petition has been filed possesses job skills that

are not easily transferable to other employment, with a focus on what skills the worker possesses. Should the company official be unable to provide information as to whether the skills are easily transferable, the state (e.g., Rapid Response or other appropriate unit) will be asked to furnish the assessment.

For criterion 3, information will be collected from government and industry association sources as part of DTAA's investigation process. Specifically, the information collected will be used to determine if: (a) the number of firms in the industry is declining; or (b) the conditions (such as declining production and/or employment) in the industry are such that the affected workers are not likely to find new employment within the industry; or (c) aggregate U.S. imports of products like or directly competitive with those produced in the industry are increasing.

### C. DETERMINATION PROCESS

Whenever petitioners seek a determination of eligibility to apply for the ATAA program, the determination document issued at the conclusion of the investigation will clearly state whether or not the petitioning workers are eligible to apply for the ATAA program. This statement shall appear directly after the statement of eligibility to apply for regular TAA. Determinations of eligibility to apply for the ATAA program and for regular TAA, reached under the same petition, will be issued together in the same determination document. Determinations of eligibility to apply for regular TAA and for the ATAA program, issued under the same petition, will apply to the same identifiable worker group.

Certifications issued based upon TAA petitions filed before August 6, 2003, can only be for eligibility to apply for regular TAA. No active certification of eligibility to apply for regular TAA will be amended to include certification of eligibility to apply for the ATAA program. However, if DTAA has not yet issued a determination of eligibility for TAA, the petitioner may withdraw the TAA petition and submit a new petition requesting both TAA and ATAA (which will create a new impact date, and, thus, may jeopardize the eligibility of certain workers who may have been included in the withdrawn petition). The date of issuance is considered the date on the determination document.

Requests for reconsiderations and/or judicial review of ATAA determinations are the same as under the regular petition process for TAA.

### D. RAPID RESPONSE ACTIVITIES

The implementation of the ATAA program provides additional opportunities for Trade Act coordinators and other local One-Stop Career Center partners to work more closely with state and local Rapid Response teams to enhance the provision of information and services to workers who have been or will be impacted by increased imports or shifts in production to other countries. The ATAA program provides an opportunity for adversely affected older workers who may not be interested in retraining to take full advantage of comprehensive reemployment services and assistance available through TAA, WIA and the One-Stop system.

The ATAA program is an integral part of an enhanced menu of reemployment services and assistance available to eligible individuals through the Act. State and local trade program staff should be working closely with Rapid Response teams and other local One-Stop Career Center system partners to ensure the dissemination of information regarding all aspects of the Trade Act program, including HCTC and ATAA, both prior to and following the notification of layoffs, petition filings and certifications. It is essential that timely and accurate information about the Trade Act program be provided to affected workers to facilitate more informed decision-making and to expedite their return to employment.

Rapid Response activities for potentially trade affected workers within the local One-Stop Career Center should include:

- Immediate and ongoing dissemination of information on TAA, HCTC, and ATAA, including early intervention measures prior to and following notices of layoff.
- Distribution of available TAA, HCTC, and ATAA posters, brochures, Web sites, fact sheets, desk aids, videos, and public service announcements.
- Presentations regarding TAA, HCTC, and ATAA to Chambers of Commerce and other employer organizations, organized labor, economic development agencies, state and local elected officials, community-based organizations, and faith-based organizations.
- Upon request, provision of information to DTAA investigators with respect to the transferability of worker job skills to other employment for determination of ATAA group eligibility.

#### E. ELIGIBILITY REQUIREMENTS

After the issuance of a certification of eligibility to apply for TAA and ATAA and when the adversely affected worker is fully informed of the benefits and services available under the TAA and ATAA programs, the worker will need to consider the choice of benefits and services under one program or the other. If the worker's preferred option is the ATAA program, the worker should be encouraged to take advantage of reemployment services and assistance available to him/her with the goal of returning to work within 26 weeks of their qualifying separation in order to be eligible for ATAA. In making this choice, workers should avail themselves of assistance from local Trade Act coordinators and WIA employment managers.

While an adversely affected worker is seeking employment to qualify for the ATAA program, actions must be taken to ensure regular TAA deadlines are met and options are preserved. Section 231 of the Act imposed a deadline by which a worker must be enrolled in approved training, or have a waiver of this requirement, in order to be eligible for TRA. This deadline is either 8 weeks after the issuance of the relevant certification of eligibility to apply for TAA benefits or services or 16 weeks after the worker's most recent qualifying separation, whichever is later (commonly



referred to as the 8/16 deadline). This 8/16 deadline applies to eligibility for all TRA, both basic and additional.

The state should assess whether a worker is entitled to a training waiver, prior to the 8/16 week deadline for applying for training, based on one of the waiver criteria described below, as appropriate, which preserves the worker's TRA eligibility if a job is not obtained within 26 weeks of the worker's qualifying separation. The waiver criteria are:

1. Recall. – The worker has been notified that the he/she will be recalled by the firm from which the separation occurred.
2. Marketable Skills. – The worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U.S.C. 503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.
3. Retirement. – The worker is within 2 years of meeting all requirements for entitlement to either –
  - a. old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et. seq.) (except for application therefore); or
  - b. a private pension sponsored by an employer or labor organization.
4. Health. – The worker is unable to participate in training due to the health of the worker, except that 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.
5. 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.
6. Training Not Available. – Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2302), and employers), no training that is suitable for the worker is available at reasonable cost, or no training funds are available.

All workers should be informed that, if they anticipate not being able to obtain a job within 26 weeks of their qualifying separation, they should contact their local One-Stop Career Center immediately, and consider seeking the TAA benefits, including training to which they are entitled. While ATAA participants are eligible for HCTC, they are only eligible once they are participating in the ATAA program and receiving a benefit under the program. Thus, if workers considering

ATAA have not become reemployed and are in need of HCTC, the Trade Act coordinator should assess whether a training waiver might be appropriate under one of the enumerated criteria. As with all training waivers, any waivers issued should be reviewed every 30 days to determine their continued applicability. In cases where the waiver is no longer appropriate, it should be revoked.

To be eligible for ATAA, 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. Obtain reemployment by the last day of the 26<sup>th</sup> week after the worker's qualifying separation from the TAA/ATAA certified employment. This reemployment may be verified with a copy of the job offer letter or a check stub.
3. Must not be expected to 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 indicating that annual wages will not exceed \$50,000.
4. Be reemployed full-time as defined by the state law where the worker is employed. The verification will be conducted in the same manner as is used for determining UI benefits.
5. Cannot return to work to the employment from which the worker was separated. Thus, the worker cannot return to the same division/facility that he/she was separated from nor can the worker do the same or similar work for the employer that he/she was separated from in another division/facility.

The application for ATAA must be filed within two years of the first day of qualifying reemployment. For purposes of this application, and in order to establish the ATAA payment, wages at separation are defined as the annualized hourly rate at the time of the most recent separation, which is set forth in Section G of this TEGL, "ATAA Payments." Wages at reemployment are defined as the annualized hourly rate at the time of reemployment, which is also set forth in Section G. In addition, the worker must indicate that a "choice" has been made and that she/he understands that she/he cannot subsequently switch to the TAA program once she/he begins receiving the ATAA supplement. Receipt of the initial ATAA payment represents the individual's decision with respect to choosing ATAA and voids the participant's rights to retraining, allowances and TRA. Correspondingly, once a worker has enrolled in training, he/she forfeits his/her right to ATAA participation.

The State TAA Coordinator will issue a written determination informing the ATAA applicant of eligibility for ATAA payments within 5 working days of receiving the worker's application for such benefits. If approved, the State TAA Coordinator will also notify the appropriate state payment unit and other appropriate component offices within the state. The ATAA applicant has

the right to appeal a state determination which denies ATAA benefits in the same manner as provided for in state law for TRA determinations.

For purposes of the ATAA program, the eligibility determination date, which establishes the two-year period during which ATAA benefits can be paid, will be the date of the first qualifying reemployment.

#### F. CONTINUING ELIGIBILITY

Once approved for the ATAA program, individuals who continue to meet the eligibility criteria are paid ATAA benefits until a total of \$10,000 in benefits has been received, or a period of two years has elapsed since their first qualifying reemployment, whichever occurs first. Nothing in the statute precludes an individual from working for different employers within this two-year period. Further, employment is not required to be consecutive. However, ATAA benefits are not payable during periods of unemployment (i.e., one full week without wages). Changes in employment that do not encompass a period of unemployment will be handled during the state's ongoing review of each worker's ATAA status, as described below. In the event of a period of unemployment, workers will need to complete a new Individual Application for ATAA upon reemployment. The worker would be eligible for the remaining ATAA benefits to which he/she is entitled. The two-year eligibility period continues to run from the date of first qualifying reemployment.

In the event a worker has more than one job, the employment must, at a minimum, meet the definition of full-time work as defined by state law. If additional job(s) are obtained, 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.

Each certified worker for ATAA will need to visit a state or local office in person to provide information and determine initial individual eligibility for ATAA. If the individual is determined to be eligible for ATAA, the state will need to assess continuing eligibility for the ATAA program. The worker will need to provide verification of employment and wages that will be used to determine continuing eligibility for ATAA benefits on at least a monthly basis. The state can choose to have the worker come to the local office and provide documentation to the staff, or the state has the option to accept proof of continuing eligibility by mail, fax, or some other means to verify proof of employment and wages. However, the state may not use telephone certification in these instances.

In either alternative, the state must have documented verification of the individual worker's employment and wage status on at least a monthly basis. The information provided at the local level will need to be forwarded to the State TAA Coordinator for review and approval. Once the TAA Coordinator approves the information, the state payment unit, local office, and worker will be notified and the worker will receive equivalent payment for the preceding month on a weekly, biweekly, or other basis as determined by the state as long as the calculated monthly allotment is not exceeded. The worker will receive at least a minimum monthly payment. Because the worker



will receive the ATAA wage subsidy for the preceding period for which she/he has demonstrated eligibility, the worker will not receive payment until after the initial month has been verified by the TAA Coordinator.

With respect to HCTC, the SWAs are required to report ATAA recipients (workers who are receiving the ATAA wage subsidy) to the Internal Revenue Service (IRS) in the manner described in Unemployment Insurance Program Letter (UIPL) 24-03, dated April 14, 2003.

### G. ATAA PAYMENTS

Section 246(a)(4) of the Trade Act provides that a State shall use the funds provided under section 241 to pay for a period not to exceed two years to a worker described in Section 246(a)(3)(B), 50 percent of the difference between:

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

Section 246(a)(4) supplements an individual's wages for up to two years or \$10,000, whichever occurs first, by an amount equal to 50 percent of the difference between the wages earned from the adversely affected employer and the new employment obtained after separation from adversely affected employment that is approved for ATAA payments.

An individual receiving this benefit may receive TAA relocation benefits and the HCTC, but is not eligible to receive any other benefits, including training, TRA payments, and job search allowances. The ATAA supplement shall cease in the event of one of the following:

- The individual's annualized wage, excluding the ATAA wage subsidy, is projected to exceed \$50,000 a year.
- The individual has received \$10,000 in ATAA benefits.
- The worker has reached the end of the two-year eligibility period.

The choice of payment unit for paying the ATAA wage subsidy is a state responsibility. However, the organizational placement of this payment by the state must meet Governmental Accounting Standards Board requirements. It is the responsibility of the SWA when calculating the ATAA 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 will include all jobs in which the worker is employed and constitute at least full-time employment as defined by the state. This may include any combination of full- and part-time work that meets or exceeds full-time employment.

Annualized wages at separation are defined as the annualized hourly rate at the time of the most recent qualifying separation. The annualized wages are computed by multiplying the worker's hourly rate received during the last full week of his/her employment by the number of hours the individual worked during the last full week of employment and multiplying that number by 52. Overtime wages and hours are excluded from the calculation. Annualized wages at

reemployment are defined similarly to annualized wages at separation, except that the hourly rate and hours worked must reflect those of the first full week of reemployment.

The calculated monthly allotment will be derived as follows:

### **Wage Calculation Methodology**

Annualized Separation Wages **minus** Annualized Reemployment Wages **divided by 2 equals** 50% of the difference between the two periods of wages.

50% of the difference between the two periods of wages **divided by 12 equals** the monthly ATAA wage subsidy.

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 ATAA wage subsidy, the state will repeat the above calculation and adjust the ATAA payment accordingly.

The ATAA wage subsidy will be paid on a weekly, biweekly, or other payment frequency not to exceed monthly, as established by the state, ensuring that the total payment does not exceed the \$10,000 maximum over a two-year period.

SWAs will follow the current interstate arrangement for the regular UI program regarding the agent/liable state relationship for the filing of ATAA claims.

### **H. OVERPAYMENTS**

The determination of "annualized wages" is made prospectively. An individual is deemed to have met the "earns not more than \$50,000 a year in wages from reemployment" requirement set forth in section 246 for a given month if the monthly determination of annualized wages is accurate and complete at the time it is made. No overpayment determinations need 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 will be considered valid payments that the individual was entitled to, and are not considered overpayments.

In instances where there are overpayments, due to error or fraud, for example, the state should adhere to the overpayment provisions of the Trade Act regulations at 20 CFR 617.55.

### **I. DOCUMENTATION OF BENEFIT HISTORY**

It is suggested that the state maintain a manual or automated benefit history for the ATAA recipient for a period of no less than three years for audit purposes. It is suggested that the benefit history include the following:

- Claimant Name
- Social Security Number
- Certified TAA Petition Number
- Reemployment hourly wages and hours worked per week
- Weekly Reemployment Earnings (or biweekly or other employer payment schedule)
- Address Changes Including Phone Numbers
- Status of Full Time Work Each Week
- Date of Birth
- Separation hourly wages and hours worked per week
- Separation wages with the Adversely Affected Employer
- Projected Wage with the New Employer
- Weekly benefit amounts
- Cumulative Payments Made Under the ATAA Program
- Individuals Remaining Balance Under the \$10,000 Maximum Amount  
Time Remaining Under the Two-Year Eligibility Period.

#### I. FUNDING

ATAA benefits for FY 2003 will be paid from the FY 2003 Federal Unemployment Benefit Account (FUBA) from which TRA benefits are paid.

ATAA administrative costs, relating to payment of ATAA benefits, are paid from funds appropriated for TAA administration under the State Unemployment Insurance and Employment Services Operations (SUIESO) account which supports TRA payments. Creating the list of ATAA recipients for HCTC eligibility must be funded in the same manner as creation of the list of eligible TAA recipients.

No benefit payments may be made by a state after the date that is 5 years from the date on which the state implements an ATAA program (the "termination date") except for workers who are receiving payments under the ATAA program at the time of the termination date. Such workers will continue to receive payments throughout the worker's two-year eligibility period.

#### K. REPORTING REQUIREMENTS

In order to monitor and manage the ATAA program for results, a quarterly activity report will be required. This report has been designed and will be provided to OMB in the near future for review and approval. Once approval is obtained, implementation instructions will be issued. Our intention is to have the report submitted via a Web-based interface.

6. Action Required. States must ensure that the state workforce investment system is able to implement the ATAA program and make payments to eligible program participants for petitions filed on or after August 6, 2003.

7. Inquiries. States should direct all inquiries to the appropriate ETA Regional Office.

Attachment A: Request for Determination of Eligibility to Apply for the Alternative Trade Adjustment Assistance (ATAA) Program for Older Workers