

## ATTACHMENT A

### Operating Instructions of Reversion 2021 Trade Adjustment Assistance for Workers

#### **A. APPLICABLE ADMINISTRATIVE GUIDANCE / REGULATIONS**

The TAA Program regulations, codified at 20 CFR 618, apply under Reversion 2021 unless otherwise directed in this guidance.

Set out below are the applicable regulations and guidance documents that will apply to each version of the TAA program.

| <b>Petition Series</b>                | <b>Applicable Trade Act Amendment</b>  | <b>Guidance</b>                                    |
|---------------------------------------|--|--|
| I. TA-W-69,999 and below              | TAARA (2002 Amendments) <sup>1</sup>   | TEGL No. 11-02 and Changes 1, 2, and 3; this TEGL  |
| II. TA-W-70,000 through TA- W-79,999  | TGAAA (2009 Amendments) <sup>2</sup>   | TEGL No. 22-08 and Change 1;                       |
| III. TA-W-80,000 through TA- W-80,999 | TAARA (2002 Amendments, under sunset provisions of TGAAA) –or- TAAEA (2011 Amendments), based on one-time selection under TAAEA one-time worker “choice” provision | TEGL No. 11-02 and Changes 1, 2, and 3; 20 CFR 618 |
| IV. TA-W-81,000 through TA- W-84,999  | TAAEA (2011 Amendments)  | 20 CFR 618   |
| V. TA-W-85,000 through TA-W-97,999    | TAARA (2015 Amendments)  | 20 CFR 618   |
| VI. TA-W-98,000 +                     | Reversion 2021   | 20 CFR 618; this TEGL                              |

#### **B. GROUP ELIGIBILITY**

Under Reversion 2021, limited group eligibility requirements, including petition investigation criteria (explained below) apply to all petitions for adjustment assistance that are filed on or after July 1, 2021. Workers whose impacted work is in the service sector will no longer be eligible under petitions filed on or after July 1, 2021. Furthermore, workers petitioning on or after July 1, 2021, will not be able to access TAA benefits and services prior to separation. Benefits and services may only be provided for these workers after layoffs occur; Adversely Affected

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<sup>1</sup> Trade Adjustment Assistance Reform Act of 2002, (TAARA 2002) Pub.L. 107-210.

<sup>2</sup> Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA), Pub.L. 111-5.

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Incumbent Workers (AAIW) are not eligible for services under Reversion 2021. There is no impact for workers certified under petitions filed on or before June 30, 2021. The TAA Program regulations, codified at 20 CFR 618, apply under Reversion 2021 unless otherwise directed in this guidance.

| TAA Version    | Manufacturing | Services | AAIW | Shift in Production / Secondary |
|----------------|---------------|----------|------|---------------------------------|
| 2015           | Yes           | Yes      | Yes  | Any Country                     |
| Reversion 2021 | Yes           | No       | No   | Limited Countries               |

#### B.1. Certification Criteria

1. First criterion: A significant number or proportion of the workers in the workers' firm, or an appropriate subdivision of such firm, must have become totally or partially separated or be threatened with total or partial separation.
2. Second criterion: The second criterion is satisfied if either A or B below is true:
  - A. (i) Sales or production, or both, at the petitioning workers' firm or subdivision must have decreased absolutely, and  
(ii) Imports of articles like or directly competitive with articles produced by the petitioning workers' firm or subdivision have increased, and  
(iii) The increase in imports described in (ii) contributed importantly to the petitioning workers' separation or threat of separation and to the decline in sales or production at the firm or subdivision.
  - B. (i) There has been a shift of production by the petitioning workers' firm or subdivision to a foreign country of articles like or directly competitive with the articles which are produced by the firm or subdivision; and  
(ii) One of the following conditions applies:
    - a. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; or
    - b. the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, the African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or
    - c. there has been or is likely to be an increase in imports of the articles that are like or directly competitive with articles which are or were produced by the firm or subdivision.<sup>3</sup>

#### B.2. Shift in Production – Changes in Applicable Nations

Under Reversion 2021, worker group eligibility based on the “shift in production” criteria is limited to petitions where the shift was to certain specified nations noted in B.1. Those nations

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<sup>3</sup> Note: The term “contributed importantly” as used in these worker eligibility criteria is defined in the Trade Act. The statutory definitions applicable to eligibility are set out below at the end of subsection B.3. of these instructions.

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are the ones that are, “a party to a free trade agreement with the United States,” or, “a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act,”<sup>4</sup> respectively. Attachment C of this TEGL provides the list of current eligible shift in production nations as of the date of issuance of this guidance.

#### **B.3. Secondary Workers**

Reversion 2021 provides for the certification of secondarily impacted workers; see statutory text below, from Sec. 222(b) of the Trade Act, as amended, for important definitions of secondary workers and other terms. Under Reversion 2021, eligibility for downstream producers are limited to those firms affected by increased imports from or a shift in production to Canada or Mexico.

#### **Statute:**

*(b) ADVERSELY AFFECTED SECONDARY WORKERS.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) 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 (or subdivision) is a supplier or downstream producer to a firm (or subdivision) 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 that was the basis for such certification (as defined in subsection (c) (3) and (4)); and*

*(3) either—*

*(A) the workers’ firm is a supplier and the component parts it supplied to the firm (or subdivision) 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 (or subdivision) described in paragraph (2) contributed importantly to the workers’ separation or threat of separation determined under paragraph (1).*

*(c) Definitions - FOR PURPOSES OF THIS SECTION.—*

*(1) The term “contributed importantly” means a cause which is important but not necessarily more important than any other cause.*

*(2)(A) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.*

*(B) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or*

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<sup>4</sup> See Section 222(a)(2)(B)(ii) (I) and (II) of the Trade Act, as amended.

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*natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.*

*(3) DOWNSTREAM PRODUCER.—The term “downstream producer” means a firm that performs additional, value-added production processes for a firm or subdivision, including a firm that performs final assembly or finishing, directly for another firm (or subdivision), for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm, if the certification of eligibility under subsection (a) is based on an increase in imports from, or a shift in production to, Canada or Mexico.*

*(4) SUPPLIER.—The term “supplier” means a firm that produces and supplies directly to another firm (or subdivision) component parts for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm.*

#### **Administration:**

There are two groups of workers that can be certified as eligible to apply for adjustment assistance because the workers are secondarily affected – workers who supply components (upstream) to a firm whose workers are certified (primary), or workers who perform additional, value-added production and finishing operations (downstream) for a firm whose workers are certified (primary). A significant change from TAARA 2015 is that impacts on downstream workers are limited to Canada and Mexico; the remainder of 1 and 2 are unchanged from the current regulations.

1. Upstream workers must directly supply the primary firm. The articles produced by upstream workers must be directly incorporated into the articles that were the basis for the certification of the primary firm’s workers. Supplier chains are often categorized according to “tiers.” Firms in the first tier supply components directly to the producer of the final product. Firms in the second tier supply components to firms in the first tier, and so forth. Secondary-worker coverage applies only to workers employed by firms in the first tier. The components supplied to the primary firm by the upstream workers must either account for at least 20 percent of the production or sales of the upstream firm, 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. For upstream workers to be certified as secondarily affected, the impact on the primary firm from imports can come from increased imports from any country or a shift of production to any of the countries that qualify under the shift-of-production criteria.
2. Downstream workers must directly perform additional, value-added production processes, including final assembly or finishing, on the products of the primary firm. Downstream workers can only be certified as secondarily affected if the workers of the primary firm are certified based on increased imports from Canada or Mexico or a shift of production to Canada or Mexico. Also, the downstream workers’ firm must have suffered a loss of business with the primary firm that contributed importantly to the workers’ separations or threat of separations.

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#### B.4. Impact of Reversion 2021 on Subpart B of 20 CFR 618

The Reversion 2021 changes identified above mean that some parts of the TAA Program regulations do not apply or are otherwise impacted by the change in statute. This table summarizes the impact of Reversion 2021 on group eligibility regulations.

| Citation | Title   | Impact of Reversion 2021   |
|----------|---|--|
| 618.200  | Scope   | No change.   |
| 618.205  | Petitions.  | 618.205(e) no longer applies.  |
| 618.210  | Investigation.  | No change.   |
| 618.215  | Public hearings.  | No change.   |
| 618.220  | Use of subpoena.  | No change.   |
| 618.225  | Criteria for certification of a group of workers.   | Certifications based on shift in production limited. No automatic certifications for International Trade Commission (ITC) determinations. Service sector worker groups ineligible. |
| 618.230  | Evidence.   | No change.   |
| 618.235  | Determinations.   | No change.   |
| 618.240  | Termination of certifications.  | No change.   |
| 618.245  | Reconsideration of termination of an investigation, denial, or termination or partial termination or certification. | No change.   |
| 618.250  | Amendments of certifications.   | No change.   |
| 618.255  | Judicial review of determinations.  | No change.   |
| 618.260  | Study regarding certain affirmative determinations by the Commission.   | No change.   |
| 618.265  | Availability of information to the public.  | No change.   |

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

TRA eligibility and subsequent benefits available under the TAARA 2015 are generally extended into Reversion 2021. The maximum number of weeks of income support for adversely affected workers (AAW) is 130. Due to the complexity related to TRA, requirements for Reversion 2021 are explained below in detail. The TAA Program regulations, codified at 20 CFR 618, apply under Reversion 2021 unless otherwise directed in this guidance.

##### C.1. Eligibility for TRA – Enrollment in TAA Training Deadlines

Reversion 2021 requires that the AAW be enrolled in TAA training by the TAARA 2002 deadlines. These deadlines require enrollment no later than the later of: 1) last day of the 8<sup>th</sup> week following the date in which the certification covering the AAW was issued by the Secretary, or 2) the 16<sup>th</sup> week following the day in which the AAW was most recently totally separated from adversely affected employment.

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**Statute:** Under Reversion 2021, section 231(a)(5)(A) of the Trade Act reads:

*(5) Such worker*

*(A)(i) is enrolled in a training program approved by the Secretary under Section 236(a) of this title, and*

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

*(I) the last day of the 16<sup>th</sup> week after the worker's most recent total separation from adversely affected employment which meets the requirements of paragraphs (1) and (2),*

*(II) the last day of the 8<sup>th</sup> week after the week in which the Secretary issues a certification covering the worker,*

*(III) 45 days after the later of the dates specified in subclause (I) or (II), if the Secretary determines that there are extenuating circumstances that justify an extension in the enrollment period, or*

*(IV) 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).*

**Administration:** Under Reversion 2021, AAWs must be enrolled in training or have been issued a waiver from training by certain deadlines to be eligible for TRA. These deadlines apply for eligibility for Basic TRA – which then impacts Additional TRA and Completion TRA. A State may extend the enrollment deadlines by 45 days where the State determines that there are extenuating circumstances justifying the extension.

“Extenuating circumstances,” continue to be situations beyond the AAW’s control. This includes situations where training programs are abruptly cancelled as well as where the AAW suffers injury or illness preventing enrollment or participation in training, as described in 20 CFR 618.730.

“Enrolled in training” continues to mean that the AAW’s application for training has been approved by the State and that the training institution has furnished written notice to the State that the AAW has been accepted into the approved program, which is to begin within 30 days of such approval, as described in 20 CFR 618.110.

#### **C.1.1. Eligibility for Additional TRA Requires an Application for TAA Training within 210 days**

Under Reversion 2021, AAWs must apply for TAA training within 210 days for Additional TRA, as provided under TAARA 2002. Reversion 2021 requires that an AAW file a bona fide application for TAA training within 210 days after the date the AAW is first certified as eligible to apply for TAA or, if later, within 210 days after the date of the AAW’s total or partial separation.

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#### **C.1.2. Training Benchmarks to Meet Completion TRA Eligibility Requirements**

The training benchmark requirements must be applied to Completion TRA under Reversion 2021. All Completion TRA provisions in 20 CFR 618 continue to apply.

#### **C.1.3. Maximum Number of Weeks of TRA and Duration**

Under Reversion 2021, the maximum number of weeks of TRA for which an AAW may be eligible is 130 weeks.

##### **Basic TRA**

The maximum amount of Basic TRA payable is 52 multiplied by the individual's weekly benefit amount (WBA) during the first Unemployment Insurance (UI) benefit period following the TRA qualifying separation. This maximum amount of Basic TRA payable is reduced by the amount of the AAW's full UI entitlement (or the amount the AAW would have been entitled if the AAW had applied) in the first benefit period, as described in 20 CFR 618.750. Basic TRA is payable to AAWs who are enrolled in or participating in TAA-approved training, or who completed TAA training following a qualifying separation, or have received a timely waiver of the training requirement as described below in Section C.4. An AAW who does not meet the eligibility criteria for Basic TRA is not eligible for Additional TRA or Completion TRA either.

##### **Additional TRA**

Additional TRA is payable for up to 65 weeks after exhaustion of Basic TRA. Additional TRA is payable in the 78 week period that follows the last week of entitlement to Basic TRA or beginning with the first week of approved TAA training if the training begins after the last week of entitlement to Basic TRA, as described in 20 CFR 618.760.

##### **Completion TRA**

Completion TRA is payable for up to 13 weeks to assist an AAW in completing TAA training after exhaustion of Additional TRA. Completion TRA is payable during a 20 consecutive week eligibility 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. The 20 consecutive 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, as explained in 20 CFR 618.765.

#### **C.2. Weeks of Additional TRA**

The TAAEA 2011 changed the maximum number of available weeks of Additional TRA to 65 weeks. TAARA 2015 includes the 65 weeks of Additional TRA as well. Reversion 2021 also retains this change to 65 weeks.

**Statute:** Under Reversion 2021, section 233(a)(3) of the Trade Act provides:

*(3) Notwithstanding paragraph (1), in order to assist the adversely affected*

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*worker to complete a training program approved for the worker under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 65 additional weeks in the 78-week period that --*

- (A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or*
- (B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A).*

*Payments for such additional weeks may be made only for weeks in such 78-week period during which the individual is participating in such training*

**Administration:** Under the TAARA 2015, a maximum of 65 weeks of Additional TRA were available to assist the AAW to complete TAA training, which was payable to AAWs over a 78 consecutive calendar week eligibility period. Under Reversion 2021, these provisions continue to apply and the AAW must actually be participating in TAA training during the weeks in order for the AAW to be eligible to receive Additional TRA.

#### **C.3. Availability of Completion TRA**

**Reversion 2021 retains Completion TRA.** Up to 13 weeks are available to assist an AAW to complete TAA training after exhausting the maximum amount payable of Additional TRA.

**Statute:** Under Reversion 2021, section 233(g) of the Trade Act provides:

*(g) 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.*



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**Administration:** Under TAARA 2015, an AAW who has exhausted the maximum 65 weeks of Additional TRA and who requires a longer period of income support to complete an approved training program and who meets training benchmarks may be eligible to receive up to 13 weeks of Completion TRA, as described in 20 CFR 618.710. Reversion 2021 retains this benefit and it continues to be available under the same conditions. Completion TRA is payable after exhaustion of Additional TRA, provided the individual meets all other eligibility requirements of the Act, as amended, and will be governed by the applicable provisions of 20 CFR 618.765.

The five eligibility criteria for Completion TRA are unchanged and remain as follows: 1) the requested weeks are necessary for the AAW to complete a training program that leads to completion of a degree or industry-recognized credential; 2) the AAW is participating in training in each such week; 3) the AAW has substantially met the performance benchmarks established in the approved training plan; 4) the AAW is expected to continue to make progress towards the completion of approved training; and, 5) the AAW will complete training during the period authorized for receipt of Completion TRA.

#### **C.4. Waivers of the Training Requirement**

Waivers of the training requirement apply to eligibility for Basic TRA only. Reversion 2021 retains the three waivers available under TAARA 2015. States may continue to issue waivers based on the following: 1) Health, 2) Enrollment Unavailable, and 3) Training Not Available.

**Statute:** Under Reversion 2021, section 231(c) of the Trade Act of 1974 (19 U.S.C. § 2291), Waivers of Training Requirements, 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) of this section 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*

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*private sources (which may include area vocational education schools, as defined in section 3 of the Carl A. 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:** 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. Waivers available under Reversion 2021 are explained in 20 CFR 618.735. States may not waive the enrollment in training requirement after the deadlines have passed. After a termination or expiration of a waiver, AAWs must be enrolled in training by the Monday of the first week occurring 30 days after the date on which the waiver terminated, as explained in 20 CFR 618.725.

#### C.5. Limitations on TRA

Basic TRA may be payable only during the 104-week period beginning with an AAW's most recent total qualifying separation from adversely affected employment. States must apply this eligibility period under Reversion 2021.

**Statute:** Under Reversion 2021, section 233 of the Trade Act reads, in pertinent part:

*(a)(2) A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment--...*

*(a)(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 65 additional weeks in the 78-week period that...*

*(g) 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... [see benchmarks at D.1.]*

**Administration:** The 104-week eligibility period for Basic TRA begins with the first week following the week in which the AAW was most recently totally separated from adversely affected employment within the period covered by the certification. This period is fixed unless the AAW has experienced a subsequent

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total qualifying separation within the certification period,

- The 78-week eligibility period for Additional TRA is fixed and begins with the week that follows the last week of entitlement to Basic TRA or beginning with the first week of approved TAA training if the training begins after the last week of entitlement to Basic TRA,
- The 20-week eligibility period for Completion TRA is fixed and begins with the first week in which the training participant files a claim for Completion TRA and seeks compensation for such given week, as explained in 20 CFR 618.765.

#### **C.6. Elimination of Special Rules for Calculating Separations and Applying Deadlines**

The TGAAA 2009 introduced and TAAEA 2011 extended – under Section 234(b) of the Trade Act, as amended – certain special rules and provisions, as described below, that impact timeframes for TRA eligibility. Reversion 2021 does **not** include these special rules on calculating separations and applying deadlines.

##### **C.6.1. Elimination of Federal and State Good Cause Provisions for Waiving Certain Time Limits / Equitable Tolling**

Reversion 2021 eliminates the “good cause” provisions that allowed a State to waive deadlines for enrolling in training or applying for TRA benefits. This means that 20 CFR 618.730 does not apply under Reversion 2021.

While these statutory waiver provisions are no longer available, States may continue to apply the doctrine of Equitable Tolling, consistent with the regulations at 20 CFR 618.888, to extend benefit deadlines in egregious circumstances.

##### **C.6.2. Elimination of Special Rule for Judicial or Administrative Appeal**

Reversion 2021 eliminates the Special Rule established by TGAAA 2009 that allowed for the 104-week eligibility period for Basic TRA to begin with the week following the week in which the certification was issued in cases where a judicial or administrative appeal delayed the certification. This means that 20 CFR 618.755(b) does not apply under Reversion 2021.

The 104-week eligibility period for Basic TRA begins with the first week following the week in which the AAW was most recently totally separated from adversely affected employment within the period covered by the certification. If the 104-week eligibility period expires before a certification is issued under Reversion 2021 and the delay is the result of a judicial or administrative appeal, the eligibility period will not automatically begin with the date of certification. Instead, under Reversion 2021, the 104-week period begins the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment.

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#### **C.6.3. Elimination of Justifiable Cause to Extend the Eligibility Period**

Reversion 2021 eliminates the Special Rule at Sec. 233(h) of TAARA 2015 that allowed for the extension of the period in which an AAW could receive Basic TRA and Additional TRA for justifiable cause. This means that 20 CFR 618.770 does not apply and no extension for justifiable cause is available under Reversion 2021.

#### **C.6.4. Elimination of the Special Rule for Military Service**

Reversion 2021 eliminates the Special Rule for Military Service at Sec. 233(i) of TAARA 2015 that allowed States to extend any deadlines for any TAA benefit if the AAW's military service precluded meeting such deadlines. This means that 20 CFR 618.884 does not apply and no extension of deadlines due to military services is available under Reversion 2021. This also means that the training duration exception at 20 CFR 618.615(d)(4) does not apply under Reversion 2021.

#### **C.7. The First Week of TRA Eligibility is Changed**

Reversion 2021 eliminates the requirement that the first week of TRA eligibility is the first week following the TAA certification date. Under Reversion 2021, the first week of TRA eligibility is the week that begins more than 60 days after the date on which the petition that resulted in such certification was filed.

**Statute:** Under Reversion 2021, Sec. 231(a) of the Trade Act will read, in part:

*(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 more than 60 days after the date on which the petition that resulted in such certification was filed under section 221 ...*

**Administration:** Reversion 2021 reinstates the requirement that the first week of TRA eligibility is the one that begins more than 60 days after the date when the petition covering the AAW was filed. AAWs who have exhausted their UI entitlement before 60 days following the filing of a petition will have to wait up to 60 days from the petition filing date to be eligible to receive TRA. This does not change 20 CFR 618.715(d)(1) through (3) as promulgated, but does add the additional restriction on timing of first payments.

#### **C.8. Elimination of the Earnings Disregard up to the TRA Weekly Benefit Amount (WBA)**

Reversion 2021 eliminates the earnings disregard up to the TRA WBA when the AAW is participating in full-time TAA training while working.

**Statute:** Under Reversion 2021, Secs. 232(a)(1) and (2) of the Trade Act will read:

*(a) Subject to subsections (b), and (c), the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment*

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*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 worker's 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.*

**Administration:** Section 232(a) establishes the weekly amount of TRA an AAW may receive. Section 232(a)(2) requires the deduction from that weekly amount of all income that is deductible from UI under the disqualifying income provisions of State or Federal UI law. There is no TRA-specific earnings disregard under Reversion 2021. Applicable State law applies. This partially impacts the regulations at 20 CFR 618.745(c)(1), as they implement the earnings disregard under TAARA 2015.

#### **C.9. Elimination of the Election of TRA or Unemployment Insurance**

Reversion 2021 eliminates the option to file for TRA or UI in a subsequent benefit period. This option was provided under TAARA 2015, but no longer applies under Reversion 2021. Therefore, all TRA requires the exhaustion of all of the AAW's UI entitlement.

**Statute:** Under Reversion 2021, section 231(a)(3) of the Trade Act will provide that TRA eligibility is available if:

*(3) Such worker--*

- (A) was entitled to (or would be entitled to if he 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 to which he was entitled (or would be entitled if he applied therefor); and*
- (C) does not have an unexpired waiting period applicable to him for any such unemployment insurance.*

**Administration:** Reversion 2021 reinstates the absolute requirement that all UI entitlement must be exhausted before the payment of any TRA. This includes Basic TRA, Additional TRA, and Completion TRA. There is no TRA election provision under Reversion 2021. This means that the provisions at 20 CFR 618.720(e)(2) through (6) do not apply under Reversion 2021.

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#### C.10. Waiver of Recovery of TAA Overpayments

Reversion 2021 significantly revises the waiver of overpayment rules established at 20 CFR 618.832.

**Statute:** Under Reversion 2021, Sec. 243(a) of the Trade Act will read:

*(a) Repayment; deductions*

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

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

*(B) requiring such repayment would be contrary to equity and good conscience.*

*(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this part, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this chapter by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.*

**Administration:** There are two significant changes impacting waiver of repayment of overpayments of TRA. First, Reversion 2021 changes the, “must waive,” provision to, “may waive.” Second, it reestablishes the previous standard, from TAARA 2002, for determining whether to waive repayment where requiring repayment, “would be contrary to equity and good conscience.” Under Reversion 2021, a State may waive repayment if it determines that the payment was made without fault of the person or individual and that requiring repayment would be contrary to equity and good conscience. The remainder of 20 CFR 618.832 remains in place and applicable under Reversion 2021.

#### C.11. Impact of Reversion 2021 on Subpart G of 20 CFR 618

The Reversion 2021 changes above mean that some parts of the TAA Program regulations related to TRA do not apply or are otherwise impacted by the changes in statute. This table summarizes the impact of Reversion 2021 on TRA.

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| Citation       | Title  | Impact of Reversion 2021   |
|----------------|--|--|
| <b>618.700</b> | Scope  | No change.   |
| <b>618.705</b> | Definitions.   | No change.   |
| <b>618.710</b> | Categories of Trade Readjustment Allowances.   | No change.   |
| <b>618.715</b> | Applications for Trade Readjustment Allowances and payment.  | Adds a 60-day waiting period after a petition is filed before TRA can be paid.   |
| <b>618.720</b> | Qualifying requirements for Basic Trade Readjustment Allowances.                                   | No election provision. Sections 618.720(e)(2) – (5) do not apply.  |
| <b>618.725</b> | Training enrollment deadlines.   | 8 weeks from certifications OR 16 weeks from separation<br><br>No exception to deadlines for military service. No exceptions for good cause. |
| <b>618.730</b> | Good cause   | Good cause not applicable. Definition used for justifiable cause and extenuating circumstances.  |
| <b>618.735</b> | Waiver of training requirement for Basic Trade Readjustment Allowances.                            | No change.   |
| <b>618.740</b> | Evidence of qualification for Basic, Additional, and Completion Trade Readjustment Allowances.     | No change.   |
| <b>618.745</b> | Weekly amounts of Basic, Additional, and Completion Trade Readjustment Allowances.                 | Reverts to applicable State law.   |
| <b>618.750</b> | Maximum amount of Basic Trade Readjustment Allowances.   | No change.   |
| <b>618.755</b> | Eligibility period for Basic Trade Readjustment Allowances.  | No extension for judicial or administrative appeals. 618.755(b)(2) does not apply.   |
| <b>618.760</b> | Qualifying requirements for, and timing and duration of, Additional Trade Readjustment Allowances. | No change.   |
| <b>618.765</b> | Qualifying requirements for, and timing and duration of, Completion Trade Readjustment Allowances. | No change.   |
| <b>618.770</b> | Special rule for justifiable cause   | Does not apply.  |
| <b>618.775</b> | Payment of TRA during breaks in training   | No change.   |
| <b>618.780</b> | Disqualifications  | Payment of TRA while in part-time training is allowable.   |

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#### **D. TRAINING**

The regulations, codified at 20 CFR part 618, governing training apply to Reversion 2021 unless otherwise indicated here.

Reversion 2021 applies requirements similar to the more limited TAARA 2002 program to AAWs certified under petitions filed on or after July 1, 2021. Training may continue to be approved on a full-time or part-time basis as allowed under 20 CFR 618.615(b).

Reversion 2021 does not permit providing services to Adversely Affected Incumbent Workers (AAIW). Therefore, certified AAWs may not begin approved training until they have been totally or partially separated from adversely affected employment.

Under Reversion 2021, insofar as possible, States shall provide or assure the provision of such training through work-based training.

##### **D.1. Establishing Training Benchmarks to Meet Completion TRA Eligibility Requirements**

The requirements for Completion TRA and related benchmarks are unchanged under Reversion 2021. For more details about these training benchmark requirements, see 20 CFR 618.660.

For AAWs covered under Reversion 2021, only TAA administrative funds are available to establish training benchmarks and track the AAW's progress. States must rely on State programs or other partner programs to provide case management services. Refer to Section G of this document for further guidance on employment and case management services.

##### **D.2. Length of Training**

Under Reversion 2021, the maximum length of training is 130 weeks, subject to the two exceptions below.

###### **D.2.1. On-the-Job Training**

Under Reversion 2021, the maximum duration limit of 104-weeks for OJT at 618.635(a)(3)(ii) continues to apply. There are no changes to OJT under Reversion 2021.

###### **D.2.2. Apprenticeship**

Apprenticeship remains an allowable form of training under the Reversion 2021 TAA Program. The regulations at 618.635(c)(1) limiting the period of reimbursement for the work-based learning portion of an apprenticeship to 130-weeks continues to apply under Reversion 2021. The related instruction of an apprenticeship may continue to be supported by the TAA Program for the entire duration of the apprenticeship. There are no changes to apprenticeship under Reversion 2021.

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

Reversion 2021 does not explicitly prohibit part-time training. During previous program reversions, it was the regulations at 20 CFR 617 that prohibited part-time training, not the various versions of the Trade Act. Under Reversion 2021, participants may be enrolled in full-



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time or part-time training – as provided in 20 CFR 618.615(b). *Unlike TAARA 2015, participants enrolled in part-time training remain otherwise eligible for TRA.* However, because Reversion 2021 does not contain the “earnings disregard” provision, any wages earned by participants in part-time training will likely negatively affect their TRA benefits.

#### D.4. Impact of Reversion 2021 on Subpart F of 20 CFR 618

The Reversion 2021 changes above mean that some parts of the TAA Program regulations related to TAA approved training do not apply or are otherwise impacted by the changes in statute. This table summarizes the impact of Reversion 2021 on TAA approved training.

| Citation | Title   | Impact of Reversion 2021   |
|----------|---|--|
| 618.600  | Scope   | AAIWs are not eligible for services.   |
| 618.605  | General procedures  | States are still required to provide initial assessments. However, comprehensive and specialized assessments may only be provided by partner programs. |
| 618.610  | Criteria for approval of training   | No change.   |
| 618.615  | Limitations on Training Approval  | TRA is payable during part-time training but may be reduced based on an individual’s income. Exception for Uniformed Services does not apply.          |
| 618.620  | Selection of training program.  | Work-based learning is the preferred method of training.   |
| 618.625  | Payment restrictions for training programs                                  | No change.   |
| 618.630  | Training of reemployed trade-affected workers                               | No change.   |
| 618.635  | Work-based training   | AAWs in OJT or apprenticeship are not eligible for ATAA. AAIWs no longer eligible for services.  |
| 618.640  | Supplemental assistance   | No change.   |
| 618.645  | Voluntary withdrawal from a training program                                | No change.   |
| 618.650  | State standards and procedures for establishing reasonable cost of training | No change.   |
| 618.655  | Training for adversely affected incumbent workers                           | Does not apply. AAIWs are not eligible for services.   |
| 618.660  | Training benchmarks   | No change.   |
| 618.665  | Amending approved training  | No change.   |

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

Under Reversion 2021, all of the Job Search Allowance provisions at 20 CFR 618, Subpart D, continue to apply. The maximum benefit for Job Search Allowances is \$1,250. The TAA Program will still cover 90 percent of allowable costs up to that amount. The Federal Travel Regulations still apply. There are no changes from TAARA 2015.

#### **F. RELOCATION ALLOWANCES**

Under Reversion 2021, all of the Relocation Allowance requirements at 20 CFR 618, Subpart D, continue to apply. The maximum lump sum payment for Relocation Allowances is \$1,250. The TAA Program will still cover 90 percent of allowable costs associated with a relocation, in addition to the lump sum payment. The Federal Travel Regulations still apply. There are no changes from TAARA 2015.

#### **G. EMPLOYMENT AND CASE MANAGEMENT SERVICES / COORDINATION WITH PARTNER PROGRAMS**

Under Reversion 2021, training and other activities (TaOA) funds may not be used to provide Employment and Case Management Services to AAWs covered under petitions filed on or after July 1, 2021, with the exception of the initial assessment required under 20 CFR 618.330 and 618.335. For AAWs covered under Reversion 2021, the Trade Act requires States to, “make every reasonable effort,” to secure for adversely affected workers counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law, including the services provided through American Job Center delivery systems described in section 134(c) of the Workforce Innovation and Opportunity Act 29 U.S.C. 3174(2)(A). Because section 235 of the Trade Act for Reversion 2021 only requires States to make every reasonable effort to provide these services and does not authorize the use of TAA funds for these services, the Department’s longstanding position is that States may not use TAA funds to provide employment and case management services. Therefore, States must coordinate the provision of such services through its other programs such as the Wagner-Peyser Act Employment Services and the WIOA dislocated worker program, including programs supported by National Dislocated Worker Grants (DWG).

The requirement to co-enroll TAA Program participants who are eligible for the WIOA dislocated worker program continues to apply under Reversion 2021. (See 20 CFR 618.325.) DWGs, as described in Sec. 170 of WIOA, are also available to States to provide these services.

Initial assessments during the intake process are still required during Reversion 2021. Regulations at 20 CFR 618.330 require States to conduct an assessment that, “forms the basis for determining which TAA Program benefits and services, including training, are appropriate,” to help an AAW become re-employed. Section 20 CFR 618.335 requires States to conduct an initial assessment for each AAW as part of the intake process described in section 239(g) of the Act. Since these activities are required under Section 239 of the Act, and provide the basis for

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determinations of training suitability and availability under Section 236 of the Act, States may use TAA funds to pay for the costs of providing an initial assessment.

#### G.1. Impact of Reversion 2021 on Subpart C of 20 CFR 618

The Reversion 2021 changes above mean that some parts of the TAA Program regulations related to the provision of employment and case management services do not apply or are otherwise impacted by the changes in statute. This table summarizes the impact of Reversion 2021 on employment and case management services under the TAA Program.

| Citation       | Title   | Impact of Reversion 2021   |
|----------------|---|--|
| <b>618.300</b> | Scope.  | No longer applies.   |
| <b>618.305</b> | The Trade Adjustment Assistance Program as a one-stop partner.                            | No change.   |
| <b>618.310</b> | Responsibilities for the delivery of employment and case management services.             | 618.325(a) and (b) still apply.  |
| <b>618.325</b> | Integrated service strategies and Workforce Innovation and Opportunity Act co-enrollment. | No change.   |
| <b>618.330</b> | Assessment of trade-affected workers.   | No change; States are still required to provide an initial assessment.   |
| <b>618.335</b> | Initial assessment of trade-affected workers.   | No change; Initial assessments still required under Reversion 2021.  |
| <b>618.345</b> | Comprehensive and specialized assessment of trade-affected workers.                       | States may not use TaOA funds to provide comprehensive and specialized assessments. ETA strongly recommends coordinating with other State programs and partner programs to provide these assessments.  |
| <b>618.350</b> | Individual employment plans for trade-affected workers.                                   | No longer required, but strongly recommended. Can only be funded by other State programs or partner programs.  |
| <b>618.355</b> | Knowledge, skills, and abilities of staff performing assessments.                         | Staff providing initial assessments must have the knowledge, skills, and abilities identified in this section. Training of staff providing initial assessments may be provided using TAA administrative funds or partner programs. States may not use TAA funds to provide |

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|                |   |  |
|----------------|---|--|
|                |   | comprehensive and specialized assessments.   |
| <b>618.360</b> | Employment and case management services for trade-affected workers in training. | No longer required, but strongly encouraged. Can only be funded by other State programs or partner programs. |

## H. ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE (ATAA)

Under Reversion 2021, ATAA replaces the Reemployment Trade Adjustment Assistance (RTAA) benefit for older workers. All previous guidance on ATAA has been rescinded. The regulations, codified at 20 CFR part 618, apply to Reversion 2021 unless otherwise directed here.

### H.1. Petition Process

AAWs 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. A revised Petition for Trade Adjustment Assistance will be available on July 1, 2021. Under the revised form, all worker groups will automatically be considered for ATAA.

### H.2. Investigation Process

In order to establish that petitioning AAWs are eligible to apply for the ATAA program, DOL must first determine that all of the criteria for a regular TAA certification 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 the group of workers in the petitioning workers' firm are 50 years of age or older;
2. The group of 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.

For criterion 1, information will be obtained by communication with the appropriate company official from the subject firm as part of the petition 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 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

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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 the petition 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.

#### **H.3. Determinations**

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

#### **H.4. Receipt of ATAA Prohibits Access to TRA, Training Benefits, and Job Search Allowances**

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 AAW will need to consider the choice of benefits and services under one program or the other. Unlike RTAA, ATAA represents a choice between training and the wage insurance benefit. If the AAW's preferred option is the ATAA program, the AAW should be encouraged to take advantage of reemployment services and assistance available to them 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, AAWs should avail themselves of assistance from career counselors at their local American Job Center.

#### **H.5. Individual Eligibility**

To be eligible for ATAA, an adversely affected worker must meet the following conditions:

1. Be at least age 50. The individual's age can be verified with a driver's license, birth certificate, or other appropriate documentation. A worker denied by virtue of being 49 years old at initial reemployment, may reapply when they turn 50 years old. However, the worker must reach age 50 by the last day of the 26th week described in 2. below.
2. Obtain reemployment by the last day of the 26th week after the worker's qualifying separation from the adversely affected employment. This reemployment may be verified with a copy of the job offer letter or a check stub. The worker must obtain reemployment by the last day of the 26th week after the worker's qualifying separation from TAA/ATAA certified employment. This means that the worker's first day of employment must have occurred during the 26-week period.

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3. Must not be expected to earn more than \$50,000 annually in gross wages 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. If the individual is issued a determination denying eligibility for an ATAA wage supplement based on the first reemployment because the reemployment did not meet the conditions to qualify for an ATAA wage supplement, and if the individual is subsequently separated and finds a new job that does meet the conditions for ATAA, then a new ATAA application will have to be submitted. In this case, since the first reemployment did not qualify the individual for ATAA it cannot be used to establish qualifying reemployment within 26 weeks. Therefore, the subsequent full-time employment must occur within the 26 weeks from the qualifying separation to be considered for the ATAA subsidy.
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. The agent State and liable State responsibilities at 20 CFR 618.824 continue to apply.
5. Cannot return to the employment from which the worker was separated. Thus, the worker cannot return to the same division/facility that they were separated from nor can the worker do the same or similar work for the employer that they were separated from in another division/facility.

The worker's 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 H.7. 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 H.7. This is unchanged from the regulations at 20 CFR 618.520. In addition, the worker must indicate that a "choice" has been made and that the worker understands that they cannot subsequently switch to the TAA program once the worker 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, they forfeit their right to ATAA participation.

The State 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 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.

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For purposes of ATAA, 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.

#### **H.6. Continuing Eligibility**

Once approved for ATAA, workers 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, an AAW already receiving ATAA payments who has a period of unemployment will not be eligible to receive ATAA for that period, as provided in 20 CFR 618.515(a)(2). 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 they are 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.

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 another method, including: an online portal, email, mail, or fax, to verify proof of employment and wages.

In either alternative, the State must have documented verification of the individual worker's employment and wage status on at least a monthly basis. Once the State 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 long as payments are at least made monthly) 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 they have demonstrated eligibility, the worker will not receive payment until after the initial month has been verified by the State.

#### **H.7. ATAA Payments**

Section 246(a)(2)(A) of the Trade Act, as amended, provides that a State shall use the funds provided under section 241 to pay to a worker described in Section 246(a)(3)(B), for a period not to exceed two years, 50 percent of the difference between:

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

An individual receiving this benefit may receive TAA relocation benefits and the Health Coverage Tax Credit (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 supplement 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 State 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 the worker's employment by the number of hours the individual worked during the last full week of employment and multiplying that number by 52. (See 20 CFR 618.520(a)(2)(i) for more information.)

*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. (See 20 CFR 618.520(a)(2)(ii) for more information.)

#### **H.7.1. Wage Calculation Methodology**

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

50 percent of the difference between the two periods of wages divided by 12 equals the monthly ATAA wage supplement.

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 supplement, the State will repeat the above calculation and adjust the ATAA payment accordingly.



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The ATAA wage supplement 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.

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

#### **H.7.2. ATAA 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 Section C.10. of this TEGL.

#### **H.8. Impact of Reversion 2021 on Subpart E of 20 CFR 618**

The Reversion 2021 changes above mean that some parts of the TAA Program regulations related to ATAA (RTAA in the regulations) do not apply or are otherwise impacted by the changes in statute. This table summarizes the impact of Reversion 2021 on ATAA.

| <b>Citation</b> | <b>Title</b>  | <b>Impact of Reversion 2021</b>  |
|-----------------|---|--|
| <b>618.500</b>  | Scope.  | No change.   |
| <b>618.505</b>  | Individual eligibility.   | Must be part of a worker group certified as eligible for ATAA.<br>Must be employed full-time.<br>Does not return to employment from which they were separated. |
| <b>618.510</b>  | Eligibility period for payments of Reemployment Trade Adjustment Assistance and application deadline. | Must be reemployed within 26 weeks of separation from adversely affected employment.   |
| <b>618.515</b>  | Continuing eligibility and timing of payments.  | 618.515(a)(4) does not apply.  |
| <b>618.520</b>  | Benefits available to eligible adversely affected workers.  | ATAA recipients are not eligible for any other benefit under the TAA Program other than relocation allowances and the HCTC.                                    |

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|                |  |   |
|----------------|--|---|
|                |  | Receipt of ATAA prohibits eligibility for other benefits. |
| <b>618.525</b> | Determinations, redeterminations, and appeals.   | No change.  |
| <b>618.530</b> | Reductions of Reemployment Trade Adjustment Assistance payments; priority of payments. | No change.  |

#### I. Health Coverage Tax Credit (HCTC)

There are no changes to the operation or availability of HCTC under Reversion 2021. As of the date of this guidance, HCTC is authorized through December 31, 2021. States must continue reporting the list of potentially eligible recipients to the IRS as previously instructed via Unemployment Insurance Program Letter (UIPL) No. 01-17, *Health Coverage Tax Credit (HCTC) for Eligible Trade Adjustment Assistance (TAA) Recipients and Alternative TAA (ATAA) and Reemployment TAA (RTAA) Recipients*.

#### J. Definitions

Most of the definitions contained in Subpart A of 20 CFR 618 are unaffected by Reversion 2021. Additional definitions impacting petitioning worker groups are found in Section B of this TEGL.

##### J.1. Impact of Reversion 2021 on Subpart A of 20 CFR 618

| Citation       | Title   | Impact of Reversion 2021 |
|----------------|---|--------------------------|
| <b>618.100</b> | Purpose and scope.                              | No change.               |
| <b>618.110</b> | Definitions.                                    |                          |
|                | <i>Adversely affected incumbent worker</i>      | No longer applies.       |
|                | <i>Eligible RTAA recipient</i>                  | Now ATAA.                |
|                | <i>Period of duty</i>                           | No longer applies.       |
|                | <i>Reemployment Trade Adjustment Assistance</i> | Now ATAA.                |
|                | <i>Service</i>                                  | No longer applies.       |
|                | <i>Trade-affected worker</i>                    | No longer applies.       |
| <b>618.120</b> | Severability.                                   | No change.               |

#### K. General Program Administration

In general, all of Subpart H of 20 CFR 618 continues to apply under Reversion 2021. The table below provides an overview of the differences. The differences noted below are addressed in other sections of this TEGL.

##### K.1. Impact of Reversion 2021 on Subpart H of 20 CFR 618

| Citation       | Title                                  | Impact of Reversion 2021 |
|----------------|--|--------------------------|
| <b>618.800</b> | Scope                                  | No change.               |
| <b>618.804</b> | Agreements with the Secretary of Labor | No change.               |

**ATTACHMENT A****Operating Instructions of Reversion 2021  
Trade Adjustment Assistance for Workers**

|                |   |   |
|----------------|---|---|
| <b>618.808</b> | State rulemaking  | No change.  |
| <b>618.812</b> | Subpoenas   | No change.  |
| <b>618.816</b> | Trade Adjustment Assistance Program benefit information and provision of services to workers. | 618.816(c)(1)(i), related to employment and case management, does not apply.  |
| <b>618.820</b> | Determinations of eligibility; notices to individuals.  | No change.  |
| <b>618.824</b> | Liable State and agent State responsibilities.  | No change.  |
| <b>618.828</b> | Appeals and hearings.   | No change.  |
| <b>618.832</b> | Overpayments; penalties for fraud.  | “May waive” instead of “shall waive.” Recovery based on “equity and good conscience” instead of “financial hardship.” |
| <b>618.836</b> | Recovery of debts due the United States or to others by Trade Adjustment Assistance offset.   | No change.  |
| <b>618.840</b> | Uniform interpretation and application of this part.  | No change.  |
| <b>618.844</b> | Inviolate rights to Trade Adjustment Assistance or Reemployment Trade Adjustment Assistance.  | No change. (RTAA is ATAA.)  |
| <b>618.848</b> | Veterans' priority of service.  | No change.  |
| <b>618.852</b> | Recordkeeping and disclosure of information requirements.                                     | No change.  |
| <b>618.856</b> | Information, reports, and studies.  | No change.  |
| <b>618.860</b> | General fiscal and administrative requirements and cost classification.                       | No change.  |
| <b>618.864</b> | Trade Adjustment Assistance Program performance.  | No change.  |
| <b>618.868</b> | Unemployment Insurance.   | No change.  |
| <b>618.872</b> | Travel under the Trade Adjustment Assistance Program.   | No change.  |
| <b>618.876</b> | Verification of eligibility for program benefits.   | Does not apply.   |
| <b>618.884</b> | Special rule with respect to military service.  | Does not apply.   |
| <b>618.888</b> | Equitable tolling.  | No change.  |
| <b>618.890</b> | Staffing flexibility.   | No change.  |
| <b>618.894</b> | Nondiscrimination and equal opportunity requirements.   | No change.  |
| <b>618.898</b> | Applicable State law.   | No change.  |

**L. Allocation of Funds**

Reversion 2021 affects the availability of funding under the TAA Program by reducing the cap on Training and Other Activities (TaOA) funding from \$450 million per year to \$220 million per year. Additionally, Reversion 2021 no longer authorizes the Department to recapture and redistribute funds as provided in 20 CFR 618.950.

**ATTACHMENT A****Operating Instructions of Reversion 2021  
Trade Adjustment Assistance for Workers****L.1. Impact of Reversion 2021 on Subpart I of 20 CFR 618**

| <b>Citation</b> | <b>Title</b>   | <b>Impact of Reversion 2021</b>        |
|-----------------|--|--|
| <b>618.900</b>  | Annual cap on funds available for Training and Other Activities.   | Cap reduced to \$220 million per year. |
| <b>618.910</b>  | Initial allocation of funds.                                       | No change.                             |
| <b>618.920</b>  | Reserve fund distributions.  | No change.                             |
| <b>618.930</b>  | Second distribution.   | No change.                             |
| <b>618.940</b>  | Insufficient funds.  | No change.                             |
| <b>618.950</b>  | Recapture and reallocation of Training and Other Activities funds. | Does not apply.                        |