

TRADE ADJUSTMENT ASSISTANCE (TAA) APPEALS TECHNICAL ASSISTANCE GUIDE

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TRADE ADJUSTMENT ASSISTANCE APPEALS TECHNICAL ASSISTANCE GUIDE

PURPOSE

This Technical Assistance Guide was developed to assist appellate bodies throughout the States that are responsible for issuing eligibility decisions on Trade Adjustment Assistance (TAA) benefits. The goal is to provide program information for hearing officers.

This document is a quick reference guide that illustrates the applications of the provisions of the statute authorizing the TAA program and the regulations issued by the Department of Labor (the Department). Some of the major programmatic issues have been identified and isolated into scenarios for clarification. The specific statutory section as well as the regulatory citation also are provided.

The issues presented are specifically related to the payment of trade readjustment allowances (TRA) and not any other TAA benefits. The scenarios presented are provided to give the reader a “live or dynamic” situation which occurs frequently in contrast to a “static” situation when reading the statute and the regulations. This Guide does not cover issues under NAFTA-TAA. A separate supplemental Guide on NAFTA-TAA accompanies this Guide.

To assist the reader in locating particular types of issues, an index of each scenario with a cross reference phrase or highlight of the issue being presented is included at the end of this document.

This Guide does not supersede the statute or the regulations. Furthermore, this Guide is not to be cited as authority for State decisions. It is only an illustrative tool to be used to enhance or to develop the reader’s understanding of issues involved in the TAA program, specifically issues related to the payment of TRA.

TRADE ADJUSTMENT ASSISTANCE (TAA)

Authority:

Chapter 2 of Title II of the Trade Act of 1974, 19 U.S.C. 2271-2322, as amended;
TAA program regulations at 20 CFR Part 617.

Background:

The TAA program assists individuals who are unemployed as a result of increased imports. The program helps eligible individuals return to suitable employment by providing reemployment services and other benefits including:

- Trade readjustment allowances (TRA),
- Training,
- Subsistence payments,
- Transportation payments,
- Job search allowances,
- Relocation allowances, and
- Job search programs.

TAA is a Federal program administered by State agencies under agreements with the Secretary of Labor. The procedural matters pertaining to the program are governed under the applicable State unemployment insurance (UI) law, except where inconsistent with the Trade Act (the Act) and the Federal regulations. A State agency may establish supplemental procedures not inconsistent with the Act and the regulations or procedures prescribed by the Department of Labor, as provided at 20 CFR 617.54. The exact text of such supplemental procedures must be certified by a responsible State agency official but shall be effective only after approval by the Department. If there is a conflict between Federal law and State law, or between their interpretations, Federal law and its interpretation as determined by the Department shall govern.

TRADE READJUSTMENT ALLOWANCES (TRA)

TRA is available to eligible individuals who are *adversely affected workers* covered under a *certification* of group eligibility. *Certification* of group eligibility means a specified group of workers of a firm or appropriate subdivision of a firm that has been certified by the Department as eligible to apply for TAA.

To receive TRA, such individuals also must:

- 1) meet a wage and employment requirement;
- 2) be (or have been) entitled to and have exhausted unemployment insurance; and
- 3) be enrolled in or participating in TAA-approved training, have completed

such training, or have obtained a waiver of the training requirement (note that waiver is not applicable to NAFTA-TAA-approved training).

Basic TRA is payable during a 104-week eligibility period that begins with the first week following the week in which a total qualifying separation occurred. *Additional TRA* is payable during the consecutive calendar weeks that occur in the 26-week period that either immediately follows the last week of entitlement to basic TRA otherwise payable to the individual, or begins with the first week of TAA training if such training begins after the last week of entitlement to basic TRA.

Entitlement to *additional TRA* requires that the individual be participating in TAA training (no waivers allowed), and that the individual must have filed a bona fide application within 210 days after the date of the first certification under which the individual is covered, or, if the individual's qualifying separation occurred after the date of the first certification under which he/she is covered, within 210 days after the date of the individual's most recent partial or total separation from adversely affected employment, provided it occurred within the certification period of group eligibility.

See Section II for a complete explanation of the qualifying requirements for TRA.

SECTION I - DEFINITIONS

1. Adversely Affected Worker

(19 U.S.C. 2319(2); Sec. 247(2) of the Trade Act; 20 CFR 617.3(c))

An adversely affected worker is an individual who, because of lack of work in adversely affected employment, (a) has been totally or partially separated from such employment, or (b) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

Only individuals covered by a TAA certification issued by the Department of Labor, and whose separation occurred during the period covered by the certification and initiated by the employer because of lack of work, are adversely affected workers. This is an important point in contrast to regular UI eligibility, because workers who voluntarily left or were discharged from their employment may receive UI after issuance of a determination finding that the facts and circumstances which led to the separation are not disqualifying under State law. Therefore, actual receipt of UI does not automatically result in a determination that the individual was separated due to lack of work and is an adversely affected worker.

A lack of work separation is the only separation which results in a determination that an individual is an adversely affected worker.

If, after becoming an adversely affected worker, an individual returns to any employment (adversely affected or not) and subsequently becomes separated by reasons other than lack of work, such individual will not lose the designation as an adversely affected worker. Once an individual is determined to be an adversely affected worker, the individual remains an adversely affected worker regardless of subsequent employment. This, however, does not act as a waiver for the other eligibility requirements under State law or the Trade Act that must be met for the individual to receive UI and TRA.

Three scenarios follow which illustrate and clarify this issue:

SCENARIO 1

An individual is separated from employment as a result of lack of work due to a plant closing. The group of workers is certified as eligible to apply for TAA benefits. Under this scenario, the worker is an adversely affected worker if separated during the period covered by the certification.

SCENARIO 2

An individual voluntarily quits or is discharged, for reasons other than for “lack of work”, from employment, and such separation occurs during the period covering the worker group for TAA benefits under the certification. Under State law, the individual is cleared from a potential disqualification and collects UI. Under this scenario, the worker is not an adversely affected worker, because the separation was for reasons other than lack of work. The fact that the separation is adjudicated favorably to the individual for UI eligibility does not make the individual an adversely affected worker.

SCENARIO 3

An individual is separated as indicated under Scenario 1. The individual returns to work with the same certified firm or with another non-certified firm and is later separated for reasons other than lack of work (discharge/voluntarily quit). This subsequent separation has no effect on whether the individual is an adversely affected worker because that determination was made under Scenario 1. At this point, the determination as to whether the worker is eligible for specific TAA benefits, such as TRA, is independent of the requirement that the worker be an adversely affected worker, which is the primary determination for entitlement to TAA benefits and which the worker had previously met. The result under this scenario is that, although the individual is an adversely affected worker, such worker may or may not be eligible for TRA because the subsequent separation (discharge/voluntary quit) may be disqualifying under State law for receipt of UI and, thus, for TRA for those weeks of UI disqualification per 20 CFR 617.18(a). If a determination on the second and most recent separation is adjudicated in favor of the worker, such worker will receive UI and may be able to qualify for TRA. If, on the contrary, the worker is disqualified, no UI or TRA will be paid until the worker satisfies the UI requalifying requirements under State law.

2. Bona Fide Application for Training

(19 U.S.C. 2293(b); Sec. 233(b) of the Trade Act; 20 CFR 617.3(i), 617.15(b)(2))

A bona fide application for training is an individual’s signed and dated application for training, filed with the State agency administering the TAA training program, and on a form containing the individual’s separation and other relevant data. Such form shall be signed and dated by a State agency representative upon receipt.

Approval of TAA training is a requirement for TRA eligibility, and filing a timely bona fide application for training is necessary to obtain TAA-approved training. However, adversely affected workers may receive basic TRA without actual participation in TAA

training, because participation may be waived for various reasons (see page 32). However, the act of issuing a waiver presupposes that a timely bona fide application for TAA training was filed, but that training was not or could not be approved at such time.

The bona fide application is more acutely important for eligibility for additional TRA, which is possible only if the individual is participating in training and the application for TAA-approved training was filed within the time limit established by law and regulations (210 days - see “Background” section for TRA). There is no exception to this eligibility requirement (e.g., good cause under State law, or otherwise) for additional TRA, which underscores the importance of the requirement to file a timely bona fide application for TAA-approved training. (Note: State agencies must accept applications even if their fiscal year dollar allocation for such training is depleted at the time that the application is made).

The importance of the application requirement is not the availability of TAA-approved training for the individual -- but that the bona fide application for TAA-approved training was filed timely.

Several scenarios are presented for illustration and clarity:

SCENARIO 4

An adversely affected worker who experiences a “qualifying separation” files a bona fide application for TAA-approved training within the statutory and regulatory 210-day limitation. The worker begins participation in TAA-approved training while receiving UI, and, after exhaustion of UI, receives basic and additional TRA. There is no application issue under this scenario because the filing occurred within the 210-day limitation.

SCENARIO 5

An adversely affected worker who experiences a “qualifying separation” files a bona fide application for TAA-approved training within the 210-day limitation, and obtains a waiver because the available training opportunities are either not appropriate or feasible (as explained below). The waiver is reviewed periodically by the State agency, and the worker is eligible to receive the entire basic TRA entitlement without ever participating in TAA-approved training. Under this scenario, the worker may not receive additional TRA until such worker begins participation in TAA-approved training. If the worker begins TAA-approved training at a future date (no time limit), such worker will be entitled to additional TRA, because the filing for such training occurred within the 210-day limitation even though participation in training was waived throughout the entitlement to basic TRA.

SCENARIO 6

An adversely affected worker who experiences a “qualifying separation” during the period covered by the certification of group eligibility for TAA immediately obtains other employment with another employer (non-TAA certified) as a result of having marketable skills. The worker never visited the State agency and did not file a bona fide application for TAA-approved training. After nine (9) months (approximately 270 days) in such other employment, the worker is separated and receives UI for 26 weeks (State maximum) and then basic TRA for 26 weeks within the 104-week basic TRA eligibility period while participating in TAA-approved training. Upon exhaustion of basic TRA, the worker is not eligible for additional TRA because the application for TAA-approved training was not filed within 210 days after the date of the certification or within 210 days after the most recent qualifying separation (the first separation was the only qualifying separation in this scenario).

Under Scenario 6, there is good cause why the worker did not file a bona fide application for TAA-approved training within the 210-day limitation, since the worker went immediately from one job to the next (e.g., a Friday to the following Monday). However, the statute and the regulations do not provide for any exception to the 210-day limitation under these circumstances. Furthermore, the State agency may not implement good cause provisions under State law to waive the 210-day requirement for a bona fide application for training under this scenario.

SCENARIO 7

An adversely affected worker who experiences a “qualifying separation” during the period covered by the certification of group eligibility for TAA immediately obtains other employment with another employer (non-TAA certified) as a result of having marketable skills. The worker files a bona fide application for TAA training with the State agency. Four years later, the worker is separated from such other employment. The worker is determined to be entitled to UI for 26 weeks (the State maximum) based on the wages from the “other employment” (not the adversely affected employment). The worker will not be entitled to basic TRA after exhaustion of UI because the 104-week basic TRA eligibility period under the applicable certification has expired (see item 3. below). The worker may, however, obtain additional TRA after exhaustion of UI, provided that the worker is participating in TAA-approved training at such time. This is possible because the worker filed a bona fide application for training within the 210-day limitation.

3. Eligibility Period for TRA

(19 U.S.C. 2293(a)(2) and (3); Sec. 233(a)(2) and (3) of the Trade Act; 20 CFR 617.3(m)(1) and (2))

The eligibility period for TRA is a period of *consecutive calendar weeks* during which either basic or additional TRA is payable to an otherwise eligible individual.

Basic TRA (19 U.S.C. 2293(a)(2); 20 CFR 617.3(m)(1)) is payable during the 104-week period beginning with the first week following the week in which a total qualifying separation occurs for the individual. The individual's total qualifying separation must occur within the group certification period even though the 104-week period may extend beyond the duration of the group certification.

SCENARIO 8

An adversely affected worker has a total qualifying separation on Wednesday, March 18, 1998, which is within the group certification period (certification period includes an impact date of November 15, 1996, and termination date of January 15, 1999). The worker's basic TRA 104-week eligibility period begins with the week following such separation (Sunday, March 22, 1998). Such worker's eligibility period for basic TRA ends on Saturday, March 18, 2000, provided all other eligibility requirements are met. Please note that the 104-week eligibility period ends on a date beyond the date when the certification period ends. It is important to remember that these two dates are independent of each other.

SCENARIO 9

If the adversely affected worker under Scenario 8 returned to work in May of 1998, after receiving 8 weeks of UI, and had a subsequent total qualifying separation from the same employer on December 2, 1998, which is within the certification period (November 15, 1996 - January 15, 1999), as described under Scenario 8, such worker will have a new 104-week eligibility period which begins on Sunday, December 6, 1998, and ends on December 2, 2000. During this period, the worker may receive basic TRA, provided the other eligibility requirements are met. Please note that the new 104-week eligibility period ends on a date beyond the date when the certification period ends.

In this case, the worker will continue to receive UI based on the claim established in March of 1998, until the exhaustion of such benefits (at which time basic TRA may begin if UI exhaustion occurs within this benefit period) or until the end of the first claim's benefit year in March of 1999. This worker will likely be entitled to a second claim for UI benefits in March of 1999, which must be exhausted prior to the worker beginning/resuming entitlement to basic TRA.

SCENARIO 10

If the same worker under the previous two scenarios (8 & 9) once more returned to work with the same employer and had a separation which occurs on February 1, 1999, such worker will not establish a new 104-week basic TRA eligibility period because such separation is outside of the certification period and, thus, will not meet the requirements of a total qualifying separation. However, the previous 104-week eligibility period for basic TRA will remain in effect as described under the preceding two scenarios (8 & 9),

if applicable. However, such worker must exhaust any entitlement to UI under the applicable claim, prior to receipt of any TRA.

The governing principle to remember is that an adversely affected worker has an eligibility period of 104 weeks in which to receive basic TRA, and such period is movable, provided that the worker experiences a subsequent total qualifying separation within the certification period and meets the other eligibility requirements of the Act. Actual receipt of TRA requires that the worker must have exhausted all UI, and that there is a remaining balance of TRA in cases where the worker may have already begun receiving TRA prior to returning to work.

Additional TRA (19 U.S.C. 2293(a)(3), 20 CFR 617.3(m)(2)) is payable during the consecutive calendar weeks that occur in the 26-week period that immediately follows the last week of entitlement to basic TRA, or, if later, begins with the first week of TAA-approved training. These allowances are payable only for participation in TAA-approved training, (i.e., TRA is payable only for training that occurs for weeks after the approval of training and not for retroactive weeks of participation in the same or other approvable TAA training - (the exception being a reversal of a decision to deny payment)). This means that even though a worker previously began participation in a training which was *later approved*, TRA is payable only for the weeks after such approval is granted. The worker may not receive payment for weeks prior to such approval. In this case, the approval date is the date that the training was approved.

Payment of these allowances may occur during or after the 104-week eligibility period for basic TRA, provided the individual filed for TAA-approved training within the 210-day limitation and has exhausted basic TRA as well as all UI entitlement. If the individual becomes entitled to UI after commencing the receipt of additional TRA, additional TRA payments are suspended until the individual exhausts such UI. The 26-week period will continue to run regardless of the individual's ineligibility for or suspension of receipt of additional TRA.

SCENARIO 11

The worker under basic TRA Scenario 8 above begins receiving UI soon after the total qualifying separation, effective March 22, 1998. Exhaustion of UI occurs on September 26, 1998, by the worker having received 26 weeks of benefits. The worker then is entitled to basic TRA, while participating in TAA-approved training (application filed timely), within the 104-week eligibility period (determined to be March 22, 1998 through March 18, 2000). Upon exhaustion of 26 weeks of basic TRA on March 27, 1999, the worker will be entitled to receive 26 weeks of additional TRA, provided the worker continues participation in TAA-approved training. Once this 26-week period of additional weeks of TRA begins, such period will run continuously, regardless of any events such as the worker's return to employment or entitlement to a new claim of UI. Please note that it is possible, but not required, for the worker to receive both basic and additional TRA within the original 104-week basic TRA eligibility period.

SCENARIO 12

The worker under basic TRA Scenario 8 above begins receiving UI soon after the total qualifying separation, effective March 22, 1998. Exhaustion of UI occurs on September 26, 1998, by the worker having received 26 weeks of benefits. The worker is then entitled to basic TRA within the 104-week eligibility period (determined to be March 22, 1998 through March 18, 2000), but TAA training (filed timely) has been waived since it is not feasible or appropriate for such worker. The worker exhausts 26 weeks of basic TRA on March 27, 1999. Additional weeks of TRA are not available because such worker is not participating in TAA-approved training.

In March of 2003, the worker begins participation in TAA-approved training (32 weeks or two semesters), and is entitled to and begins to receive additional TRA because the training application was filed timely. The worker will receive 26 weeks of additional TRA during the 26 consecutive-week period that begins with the TAA-approved training program, provided the worker continues to participate in training (no exceptions or waivers permitted) during such period and that the worker is not entitled to UI.

If the worker becomes entitled to UI during the 26 consecutive-week period, the worker will not be eligible for additional weeks of TRA, but the 26-week period will continue to run. If after a brief period of receiving UI within the 26-week period which resulted in ineligibility for additional TRA, the worker is still participating in TAA-approved training, the worker may receive additional TRA for weeks remaining in the 26-week period. The same result applies if the worker obtains employment and ceases participation in TAA-approved training. If the worker is able to resume training at a later date, such worker will be eligible to receive additional TRA only for weeks remaining in the consecutive 26-week period.

Under all potential scenarios, no additional TRA is payable after the conclusion of the 26 consecutive-week period even if the worker did not exhaust the 26 additional weeks available to assist such worker complete TAA-approved training, and the worker is still participating in such training.

4. Exhaustion of UI

(19 U.S.C. 2291(a)(3)(B); Sec. 231(a)(3)(B) of the Trade Act; 20 CFR 617.3(p) and (s), 617.11(a)(2)(v))

An individual is required to exhaust all rights to UI prior to receiving TRA. *Exhaustion of UI* means the individual *received all UI to which the individual was entitled* (funds are exhausted) under the applicable State law or Federal unemployment compensation law in a benefit period, *or* the individual's *benefit period expired*.

Under the first part of the above definition (**received all UI**), to receive TRA for any

week, eligible individuals must exhaust not only the first UI entitlement under which their TRA entitlement is established, but also any subsequent UI to which they may be entitled as well as not have an unexpired waiting period. This means that *any time an individual becomes entitled to UI while receiving TRA, TRA will be suspended and the individual will begin receiving UI.* The weekly benefit amount of the new UI entitlement may be more, less, or the same as the amount of TRA. Such amount will be based on the new UI entitlement and has no connection with the TRA weekly amount. The individual may again receive TRA after exhaustion of all entitlement to UI, provided that the 104-week eligibility period for basic TRA has not expired (and if no subsequent 104-week eligibility period was established), or, if receiving additional TRA, the 26 consecutive-week period for additional TRA has not expired.

The second part of the definition (**benefit period expired**) specifically provides that exhaustion of UI occurs also at the end of the benefit year, even if the claim has a remaining UI balance.

SCENARIO 13

An adversely affected worker has a total qualifying separation on January 1, 1998. The worker establishes a UI claim effective January 4, 1998, which expires on January 2, 1999, and entitles such worker to receive 26 weeks of UI under State law with a weekly benefit amount of \$150. The worker receives UI until exhausting the 26 weeks of entitlement on July 11, 1998. On July 12, 1998, the worker begins to receive basic TRA (26 weeks) following the exhaustion of UI, and the amount of TRA is \$150 per week. The worker receives basic TRA until exhaustion on January 9, 1999. After exhaustion of basic TRA, the worker is not entitled to subsequent UI, and, therefore, may receive additional TRA, provided such worker participates in TAA-approved training (timely filed within the required 210-day time period).

SCENARIO 14

An adversely affected worker has a total qualifying separation on January 1, 1998. The worker is entitled to receive 26 weeks of UI under State law with a weekly benefit amount of \$150. The worker receives UI until returning to other employment on April 1, 1998. On September 1, 1998, the worker is separated from the "other employment" (non-adversely affected) and resumes entitlement to UI under State law. The worker remains unemployed and exhausts the 26 weeks of entitlement to UI on November 28, 1998. The worker is determined to be entitled to 26 weeks of basic TRA and begins to receive such benefits (\$150 per week). On January 2, 1999, the worker's benefit year expires, and, therefore, such worker is entitled to a second round of UI. This second round of UI is effective on January 3, 1999, and with a weekly benefit amount of \$125 as a result of wage credits earned subsequent to the first total separation from adversely

affected employment.

The worker receives UI on the second claim with the weekly benefit amount of \$125, even though this amount is less than the weekly amount of UI and TRA received based on the first claim. The worker may resume receipt of basic TRA after exhausting entitlement on the second UI claim and provided that the 104-week eligibility period for basic TRA has not expired. If the worker resumes receipt of TRA, the weekly amount will be \$150, based on the amount of the first UI claim. Additional TRA for \$150 per week will be payable after exhaustion of basic TRA, provided the worker has no further eligibility to UI and such worker participates in TAA-approved training (the training application having been timely filed).

SCENARIO 15

An adversely affected worker has a total qualifying separation on January 1, 1998. The worker is entitled to receive 26 weeks of UI under State law with a weekly benefit amount of \$150. The worker receives benefits for 16 weeks through May 2, 1998. As a result of illness, such worker does not claim further benefits throughout the remainder of the year. The worker again becomes eligible for UI on March 3, 1999. The claim filed effective January 4, 1998, expired on January 2, 1999, and the worker has exhausted UI entitlement even though there is a monetary balance on the claim. The worker cannot establish a new UI claim because of insufficient wage credits, and, as a result of exhausting UI, such worker may proceed to receive basic TRA, provided the worker meets all other eligibility requirements. "Exhaustion" of UI under this scenario occurred as a result of the expiration of the benefit year.

5. First Benefit Period

(19 U.S.C. 2291(a)(3)(A), 2319(15); Sec. 231(a)(3)(A), 247(15) of the Trade Act; 20 CFR 617.3(h) and (r), 617.11(a)(2)(iv))

The first benefit period for purposes of UI is the one which is established after the individual's first qualifying separation or in which such separation occurred. The weekly benefit amount on the UI claim established during this first benefit period is the same as the TRA weekly benefit amount that is payable to the adversely affected worker, unless the exceptions noted on pages 25 and 26 are applicable.

There are four different situations whereby a *first benefit period* can be established:

First, if the individual has an existing entitlement to UI at the time that a qualifying separation occurs, the benefit period of such entitlement will be this first benefit period

even though it was established prior to the qualifying separation. Second, if the individual establishes entitlement to UI after the qualifying separation (i.e., no existing entitlement at the time of the separation), the benefit period of such entitlement will be the first benefit period.

A third situation is possible when the worker did not file for UI or did not establish a benefit period following a qualifying separation due to continuous employment in "other employment" which is not "adversely affected employment." In this situation, the worker establishes the "first benefit period" exclusively as a result of the subsequent separation from "other employment." A fourth scenario is possible which is a variation of the third in that the worker filed for UI immediately following the qualifying separation, establishing a benefit year and entitlement (this is the "first benefit period" - which begins with the effective date of the claim), but never claimed a compensable week of benefits.

All four situations presented in the preceding two paragraphs require that the qualifying separation occur within the period covered by the certification of group eligibility.

SCENARIO 16

An adversely affected worker has a total qualifying separation on January 1, 1998, which is the worker's first qualifying separation under the certification covering the group of work. As a result of this separation, the worker establishes a new claim for UI, effective January 4, 1998, which expires on January 2, 1999. This claim becomes the first benefit period.

SCENARIO 17

An adversely affected worker has a total qualifying separation on January 1, 1998, which is the worker's first qualifying separation under the certification covering the group of workers. The worker renews eligibility for UI on an existing claim which was effective September 14, 1997, and in which such worker collected some benefits prior to the total qualifying separation. This claim will expire on September 12, 1998, and the benefit period of this claim becomes the first benefit period.

SCENARIO 18

An adversely affected worker had a total qualifying separation on January 1, 1998, which is the worker's only qualifying separation under the certification covering the group of workers. As a result of having marketable skills, the worker immediately obtained employment with another employer and never filed for UI. Had the worker filed for UI, such worker would not have been entitled to a week of benefits because of continuous employment and wages in excess of the weekly benefit amount that he/she would have been monetarily entitled to receive. The worker was subsequently separated from the "other employment" on April 1, 1999, and filed for UI. The UI claim established following

the subsequent separation was based exclusively on wages from such “other employment” which was not adversely affected employment. Nevertheless, the benefit period which was established following the subsequent separation is the first benefit period. Under this scenario, the worker received 26 weeks of UI, and, after exhaustion on October 9, 1999, such worker is eligible to receive basic TRA through January 1, 2000, which coincides with the end of the 104-week basic TRA eligibility period. The worker may not receive basic TRA beyond the end of the 104-week eligibility period but may be eligible for additional TRA, provided such worker is participating in TAA-approved training and the application for such training was filed within the 210-day period.

SCENARIO 19

An adversely affected worker has a total qualifying separation on January 1, 1998, which is the worker’s only qualifying separation under the certification covering the group of workers. As a result of having marketable skills, the worker obtains employment with another employer two weeks after the total qualifying separation. The worker immediately filed for UI, and would have received compensation had he/she claimed benefits. The worker is subsequently separated from the “other employment” on April 1, 1999. The UI claim established following the subsequent separation will be based exclusively on wages from such “other employment” which is not adversely affected employment. Unlike Scenario 18 above, the benefit period which is established following the subsequent separation is not the first benefit period. The first benefit period shall be the one that the worker established after filing for UI in January 1998, immediately following the qualifying separation.

Under this scenario, the worker will receive 26 weeks of UI, and, after exhaustion on October 9, 1999, such worker will be eligible to receive basic TRA through January 1, 2000, which coincides with the end of the 104-week basic TRA eligibility period. The worker may not receive basic TRA beyond the end of the 104-week eligibility period, but may be eligible for additional TRA, provided such worker is participating in TAA-approved training and the application for such training was filed within the 210-day limitation.

6. Separations (First, Qualifying, First Qualifying, Total, Partial, Layoff) (19 U.S.C. 2291(a)(1), 2319(6), 2319(11); Sec. 231(a)(1), 247(6) and (11) of the Trade Act; 20 CFR 617.3(c), (t), (z), (cc) and (ll), 617.11(a)(2)(ii))

The “first” separation for an individual due to lack of work from adversely affected employment is considered the first one which occurs within the certification period of a certification of group eligibility for TAA benefits. This separation can be either a total or partial separation. This means that a worker may establish eligibility for TAA benefits

(training, subsistence payments, transportation payments, job search allowances, relocation allowances, and job search program) with either a total or a partial separation from adversely affected employment covered under the certification. The *first* separation need not be a “qualifying” separation (defined below) to establish eligibility for TAA benefits, with the **exception** of TRA.

A “qualifying” separation for an individual is considered any total separation within the certification period of a certification of group eligibility with respect to which an individual meets the eligibility requirements for TRA. Only a “qualifying” separation establishes an eligibility period for receipt of TRA, although once an eligibility period is established, other separations may establish eligibility to receive TRA.

The “first qualifying” separation is utilized to determine the individual’s 104-week eligibility period for basic TRA and must be a total separation within the certification period of the certification of group eligibility with respect to which the individual meets the eligibility requirements for TRA.

A “total” separation means a layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists. A “layoff” is a suspension of or separation from employment by a firm for lack of work, initiated by the employer and expected to be for a definite or indefinite period of not less than seven consecutive days.

A “partial” separation is one that occurs during the certification period of group eligibility in which the individual had hours of work reduced to 80% or less of the individual’s average weekly hours in adversely affected employment and had wages in such employment reduced to 80% or less of the individual’s average weekly wage.

SCENARIO 20

An individual has a partial separation which was the “first” separation from adversely affected employment covered under a certification of eligibility for TAA program benefits. This worker is eligible for TAA benefits with the exception of TRA, provided all other eligibility requirements are met. This worker might become eligible for TRA, but only after a total separation which is also a “qualifying” separation.

SCENARIO 21

An individual has a total separation which was the “first” and “qualifying” separation from adversely affected employment covered under a certification of eligibility for TAA program benefits. This worker will be eligible for TAA benefits, including TRA, provided all other eligibility requirements are met.

7. Suitable Work

(20 CFR 617.3(kk))

Suitable work with respect to an individual means suitable work as defined in the applicable State law for claimants for regular compensation, or suitable work as defined under the applicable State law provisions consistent with the Federal-State Extended Unemployment Compensation Act of 1970, whichever is applicable. Such definition does not include self-employment or employment as an independent contractor.

SECTION II - TRADE READJUSTMENT ALLOWANCES (TRA)

1. Applications for TRA

(19 U.S.C. 2291(a)(1); Sec. 231(a)(1) of the Trade Act; 20 CFR 617.10)

An individual covered under a certification or a petition for certification may apply to a State agency for TRA. A determination may be made at any time, but payment of TRA may not be made until the certification is issued and the State agency determines that the individual is covered under the certification.

An initial application for TRA may be filed within a reasonable period of time after publication of the determination certifying the group of workers, together with applications for TRA for weeks of unemployment before the initial application for TRA is filed. An application for TRA for a week of unemployment beginning after the initial application is filed shall be filed within the time limit applicable to claims for regular UI under the applicable State law. A reasonable period of time means such period of time as the individual has good cause for not filing earlier, which includes, for example, the individual's lack of knowledge of the certification, or misinformation supplied to the individual by the State agency.

It must be stressed that the preceding paragraph refers exclusively to applications for TRA and not other TAA benefits. In essence, State agencies may apply their State law time limitations and good cause provisions to TRA applications but not to other TAA benefits, such as training. State agencies are required to advise each worker of the TRA qualifying requirements, which include the application for TAA-approved training. (Note: Currently, a State agencies' failure to inform the worker of the requirements for TAA, or providing erroneous information to the worker, does not constitute good cause to waive the time limitations on the filing for TAA-approved training. As indicated in Section I, there is no remedy if the deadline to file for TAA training within the 210-day requirement is missed by the worker, regardless of the reason).

2. Qualifying Requirements for TRA

(19 U.S.C. 2291(a); Sec. 231(a) of the Trade Act; 20 CFR 617.11(a)(2))

To qualify for TRA, an individual must meet each of the following requirements:

- a) the individual must be an adversely affected worker covered under a certification (19 U.S.C. 2291(a));
- b) the individual's first qualifying separation before application for TRA must occur

on or after the impact date of the certification and before the expiration of the two-year period beginning on the date of such certification, or, if earlier, before the termination date, if any, of such certification (19 U.S.C. 2291(a)(1));

- c) the individual must have had at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment (note exceptions below) with a single firm or subdivision of a firm in the 52-week period ending with the week of the individual's first qualifying separation, or any subsequent total qualifying separation under the same certification (19 U.S.C. 2291(a)(2));
- d) the individual must have been entitled to (or would have been entitled had the individual applied therefor) UI for a week within the benefit period in which the individual's first qualifying separation occurred, or which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first qualifying separation (19 U.S.C. 2291(a)(3)(A));
- e) the individual must have exhausted all rights to UI to which the individual was entitled (or would have been entitled had the individual applied therefor) and not have an unexpired waiting period applicable to the individual for any such UI (19 U.S.C. 2291(a)(3)(B));
- f) the individual must - 1) accept any offer of suitable work and apply for any suitable work the individual is referred to by the State agency, and, 2) actively engage in seeking work and provide tangible evidence of such efforts each week, and 3) register for work and be referred by the State agency to suitable work (19 U.S.C. 2291(a)(4)); and
- g) the individual must - 1) be enrolled in or participating in a TAA-approved training program approved by the State agency, or 2) have completed a TAA-approved training program approved by the State agency after a total or partial separation from adversely affected employment within the period of the certification covering the group of workers, or 3) have received from the State agency a written statement waiving the TAA participation-in-training requirement (19 U.S.C. 2291(a)(5)).

Paragraphs a and b are self explanatory. The others may need a more detailed explanation, which follows:

Paragraph c refers to the wage and employment requirements. The 26 weeks of employment at wages of \$30 or more must be met during the 52-week period that ends with the week of the first qualifying separation or any subsequent total qualifying separation. The regulations do not permit the combination of employment and wages under more than one certification to qualify for TRA. The wage and employment requirement is independent of the individual's monetary entitlement to UI under State law, which may require a different formula (in most States, 1½ times the high quarter

wages in the “base period,” which in most States is defined as the first four of the last five completed calendar quarters preceding the individual’s separation from any employment under State law). In essence, entitlement to UI, although a requirement for TRA, does not automatically result in entitlement to TRA. To determine whether an individual is entitled to TRA, the State agency also must determine the wages during the 52-week period ending with the first qualifying separation or any other subsequent total qualifying separation.

The wage and employment requirement described in paragraph c allows for the inclusion of weeks in which the individual is under various types of leave arrangements with the employer. Any week in which the individual: 1) is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training (7-week maximum); 2) does not work in such employment because of a disability compensable under a workers’ compensation law or plan of a State or the United States; 3) had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision (7-week maximum); or 4) is on call-up for the purpose of active duty in a reserve status in the Armed Forces of the United States (if such week began after August 1, 1990), provided that such active duty is “Federal service” (as defined at 5 U.S.C. 8521(a)(1)). This period of time shall be treated as a week of employment at wages of \$30 or more.

The application of paragraph c requires only that the worker be under any of the four leave arrangements and does not require that such worker be paid during that period at a rate which is at least \$30 or more in each of the weeks the individual is in any of the four leave arrangements described.

The maximum number of weeks allowed toward the wage and employment requirement is 7 weeks in the case of 1 or 3 above or both (employer-authorized leave and/or time served as a full-time representative of a labor organization). This specifically means that not more than 7 weeks may be counted toward the 26 weeks of employment at wages of \$30 or more if either of the two conditions are present. If both conditions are present, not more than a combined total of 7 weeks is allowed.

The maximum number of weeks allowed toward the wage and employment requirement is 26 weeks in the case of 2 and 4 above (compensable disability and/or service in the Armed Forces). This means that not more than a combined total of 26 weeks of employment at wages of \$30 or more may be counted toward the wage and employment requirements.

SCENARIO 22

An individual is eligible for UI as a result of a separation for lack of work. The monetary determination indicated that this individual had total wages in the base period equal to or exceeding 1½ times the high quarter wages in a State which defines the base period as

the first four of the last five completed calendar quarters. Further examination of the base period reveals that the individual had wages of \$6,000 in each of the first four quarters (approximately \$460 per week), as well as wages of \$6,000 in the lag quarter, and wages of \$2,000 in the current quarter which represents one month of employment. The individual will be monetarily eligible for TRA after exhaustion of UI because such worker has wages of \$30 or more in 26 weeks during the 52-week period that ends with the week of the first qualifying separation.

SCENARIO 23

An individual is eligible for UI as a result of a separation for lack of work on June 25, 1998. The monetary determination indicated that this individual had total wages in the base period equal to or exceeding 1½ times the high quarter wages in a State which defines the base period as the first four of the last five completed calendar quarters or (in this case) calendar year 1997. Further examination of the base period reveals that the individual earned \$6,000 in the first quarter (Jan.-Mar. 1997), \$6,000 in the second quarter (Apr. - Jun. 1997), \$3,000 in the third quarter (Jul. - Sep. 1997), and \$3,000 in the fourth quarter (Oct. - Dec. 1997). These amounts represent approximately \$450 per week. The individual worked 13 weeks in each of the first and second quarters of the base period, but only 7 weeks in the third quarter and 7 weeks in the fourth quarter. Furthermore, the individual worked 4 weeks in the fifth or lag quarter (Jan. - Mar. 1998) and 4 weeks in the current quarter (Apr. - Jun. 1998), both at the same rate of pay (\$450 per week). This individual will not qualify for TRA because such individual was employed for only 22 weeks (4 weeks-current quarter; 4 weeks-fifth or lag quarter; 7 weeks-fourth quarter; and 7 weeks-third quarter) during the 52-week period that ends with the week of the first qualifying separation. The individual had no other weeks of employment categorized as employer-authorized leave, disability, labor organization duty, or military service during the applicable 52-week period.

SCENARIO 24

An individual is eligible for UI as a result of a separation for lack of work on June 25, 1998. The monetary determination indicated that this individual had total wages in the base period equal to or exceeding 1½ times the high quarter in a State which defines the base period as the first four of the last five completed calendar quarters or (in this case) calendar year 1997. Further examination of the base period reveals that the individual earned \$6,000 in the first quarter (Jan. - Mar. 1997), \$6,000 in the second quarter (Apr. - Jun. 1997), \$3,000 in the third quarter (Jul. - Sep. 1997), and \$3,000 in the fourth quarter (Oct. - Dec. 1997). These amounts represent approximately \$450 per week. The individual worked 13 weeks in each of the first and second quarters of the base period, but only 7 weeks in the third quarter and 7 weeks in the fourth quarter. The analysis further reveals that the individual worked 4 weeks in the fifth or lag quarter (Jan.- Mar. 1998) and 4 weeks in the current quarter (Apr. - Jun. 1998, both at the same rate of pay of \$450 per week), and was on 4 weeks of employer-authorized leave during the current quarter, for vacation and maternity leave. This individual will be monetarily

eligible for TRA because such individual was employed for 22 weeks (4 weeks-current quarter; 4 weeks-fifth or lag quarter; 7 weeks-fourth quarter; and 7 weeks-third quarter), which combined with the 4 weeks of employer-authorized leave to meet the wage and employment requirement of 26 weeks at \$30 or more during the 52-week period that ends with the week of the first qualifying separation.

SCENARIO 25

An individual is eligible for UI as a result of a separation for lack of work on June 25, 1998. The monetary determination indicated that this individual had total wages in the base period equal to or exceeding 1½ times the high quarter wages in a State which defines the base period as the first four of the last five completed calendar quarters or (in this case) calendar year 1997. Further examination of the base period reveals that the individual earned \$6,000 in the first quarter (Jan. - Mar. 1997), \$6,000 in the second quarter (Apr. - Jun. 1997), no wages reported (no employment) during the third quarter (Jul.- Sep. 1997), and \$3,000 in the fourth quarter (Oct. - Dec. 1997). These amounts represent approximately \$470 per week. The individual worked 13 weeks in each of the first and second quarters of the base period, but only 6 weeks in the fourth quarter. Furthermore, the individual went on disability compensable under a workers' compensation program during 13 weeks in the fifth or lag quarter (Jan. - Mar. 1998) and 7 weeks in the current quarter (Apr. - Jun. 1998). This individual will be monetarily eligible for TRA because such individual was determined to be employed at wages of \$30 or more during 26 weeks during the 52-week period that ends with the week of the first qualifying separation (7 weeks of disability-current quarter, 13 weeks of disability-fifth or lag quarter, 6 weeks of work-fourth quarter, no employment-third quarter).

Paragraph d refers to the requirement that the individual must have been entitled to UI following the first qualifying separation, regardless of whether such individual filed for such benefits. Entitlement to UI means that the individual will receive benefits or would have received such benefits for at least one week which includes (or would have included) a waiting week (non-compensable) within the applicable benefit period. There are three potential situations: (1) the individual files for UI immediately following the first separation and becomes entitled to a new initial claim; (2) the individual reopens an existing UI claim following the first separation; and (3) the individual does not file for UI entitlement at all, but the individual would have been entitled to UI had such individual filed for benefits (situations 1 & 2 are self-explanatory). If the individual files for basic TRA at a later date, such as in situation 3, it must be within the established 104-week eligibility period to meet the requirement for basic TRA. If the filing is for additional TRA, an application for TAA training must have been filed timely (within 210 days of the date of the applicable certification or date of the worker's most recent total or partial separation from adversely affected employment, whichever is later) and the individual must participate in such training to establish entitlement to additional TRA. Under this third situation, the individual is deemed to have received and exhausted all rights to UI in the first benefit period and may receive basic TRA in an amount that represents 52 weeks of TRA less the amount of UI entitlement the individual would have received had

the individual applied for UI.

SCENARIO 26 (Basic TRA)

An adversely affected worker was separated from adversely affected employment on May 1, 1998. At that time, the worker did not file for UI and did not file for TAA-approved training. However, on July 12, 1999, the worker files for UI and is determined ineligible due to insufficient wage credits. The worker files for basic TRA based on UI to which the worker would have been entitled had such worker filed within one year after the separation of May 1, 1998. The State agency determines that this worker would have been entitled to UI for 26 weeks had such UI claim been filed. The worker immediately begins participation in a one-year duration TAA-approved training program and is able to receive basic TRA in an amount equal to 26 weeks (52 weeks less 26 weeks of UI entitlement) during the 104-week eligibility period which began on May 3, 1998, and will end on April 29, 2000. The worker exhausts basic TRA on January 8, 2000 and files for additional TRA. The worker will not be eligible for additional TRA, because the application for TAA training was not filed within 210 days of the separation from adversely affected employment or the group certification date.

SCENARIO 27 (Additional TRA)

An adversely affected worker was separated from adversely affected employment on May 1, 1998. The worker did not file for UI, but filed timely for a TAA-approved training program. On July 12, 1999, the worker files for UI and is determined ineligible due to insufficient wage credits. The worker files for basic TRA based on the UI to which the worker would have been entitled had such worker filed within one year after the separation of May 1, 1998. The State agency determines that this worker would have been entitled to UI for 26 weeks had a UI claim been filed. The worker immediately begins participation in a one-year duration TAA-approved training program and is able to receive basic TRA in an amount equal to 26 weeks (52 weeks less 26 weeks of UI entitlement) during the 104-week eligibility period which began on May 3, 1998, and will end on April 29, 2000. The worker exhausts basic TRA on January 8, 2000 and files for additional TRA. The worker will be eligible for additional TRA, because the application for TAA-approved training was filed within 210 days of the separation from adversely affected employment or the group certification date, whichever is the latter.

SCENARIO 28 (Additional TRA)

An adversely affected worker was separated from adversely affected employment on May 1, 1998. The worker did not file for UI, but filed timely for TAA-approved training. On July 10, 2005, the worker files for UI and is determined ineligible due to insufficient wage credits. The worker files for basic TRA based on UI to which the worker would have been entitled had such worker filed within one year after the separation of May 1, 1998. The State agency determines that this worker would have been entitled to UI for

26 weeks had a UI claim been filed. The worker is not eligible for basic TRA because the 104-week eligibility period expired on April 29, 2000. The worker begins participation in TAA-approved training on July 10, 2005, and is eligible for additional TRA because the application for TAA-approved training was filed within 210 days of the separation from adversely affected employment or the group certification date, whichever is the latter.

Paragraph e refers to the requirement that all UI must be exhausted prior to receipt of TRA. This means not only that the individual must exhaust UI prior to receipt of TRA, but also that if such individual subsequently becomes entitled to a second round of UI, TRA will be suspended and the individual must exhaust the subsequent UI entitlement prior to resuming TRA entitlement. This applies even if the weekly amount of the subsequent UI entitlement is less than the TRA weekly amount. In the case where the individual never filed for UI following the first qualifying separation but would have been eligible had the individual filed a UI claim (and there is no subsequent entitlement to UI), the individual is deemed to have “exhausted” UI at the end of the benefit period during which such individual would have been entitled to UI had the individual applied therefor.

SCENARIO 29

An adversely affected worker is eligible for UI with a weekly benefit amount of \$200. The TRA amount received after UI exhaustion is based on this amount. At some point, the worker is entitled to a second round of UI with a weekly benefit amount of \$150. TRA in the amount of \$200 shall then be suspended, and the worker will receive UI at the lesser weekly benefit amount of \$150 until exhaustion of the second UI entitlement.

SCENARIO 30

Same as Scenario 29 above, except that the worker is entitled to a weekly benefit amount of \$250 in the second UI claim. TRA in the amount of \$200 shall be suspended when the second round of UI entitlement begins, and the worker will receive UI at the higher weekly benefit amount of \$250 until exhaustion of the second UI entitlement.

Paragraph f refers to what is commonly known as the extended benefits (EB) work test which must be met by the individual under certain circumstances to receive TRA. The EB work test does not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, or for any week which begins before the individual is notified that the individual is covered by a certification, or for any week(s) the before the individual is fully informed of the EB work test. The EB work test does not apply to an individual who is enrolled in or participating in TAA-approved training, or during an approved break in such training if the individual participated in the training immediately before the beginning of the break and resumes participation in the training immediately after the end of the break. In essence, the individual is exempt from the EB work test if enrolled in, participating in, or during an

established break in TAA-approved training. The circumstances where individuals are required to meet the EB work test to receive basic TRA are: (1) when the individual has completed TAA-approved training and there is a balance remaining in basic TRA entitlement; and (2) when the individual has received a waiver from participation in TAA-approved training. It must be stressed that a worker meeting the EB work test requirements is not eligible for additional TRA, which is payable only when such worker participates in TAA-approved training.

Paragraph g refers to the TAA-approved training requirement for receipt of TRA. The TAA-approved training participation requirement does not apply to an individual with respect to claims for TRA for: (1) weeks of unemployment beginning prior to the filing of an initial claim for TRA; (2) any week which begins before the individual is notified of coverage under a TAA certification; or (3) a week before the individual is fully informed of the TAA-approved training requirement.

The requirement to be enrolled in TAA-approved training is met when the State agency approves the worker's application for training and the training institution furnishes written notice to the State agency of the worker's acceptance into the program which begins within 30 calendar days of date of the written notice. A waiver of the training requirement is not needed during this 30-day period. The requirement of having completed TAA-approved training is met if the worker completed an approved TAA training program or if such training qualifies as approvable and is approved. In all cases, the TAA-approved training must have been completed subsequent to the individual's total or partial separation from adversely affected employment within the certification period, and the training provider must have certified that all the conditions for completion of the training program have been satisfied. The completion of the training requirement allows some flexibility by permitting the worker to begin a training program prior to approval. As long as such training is completed (all program requirements met) after the partial or total separation, and such training is approved, then it is considered TAA training. In this situation, a worker has met the TAA training requirement and may receive the balance of the basic TRA, provided other eligibility requirements are met, such as the EB work test. Conversely, even if the worker has completed TAA-approved training, no additional TRA is payable because the worker is no longer participating in TAA-approved training.

Participation in TAA-approved training is required for eligibility for basic TRA and additional TRA. This became a requirement with the enactment of the 1988 amendments to the Trade Act. Prior to such amendments, TAA-approved training was a requirement only for additional TRA eligibility, and the worker had to be making satisfactory progress in such training. At first glance, it might appear that the "participation" requirement is a softer or easier requirement which may imply "just showing up to class" and/or "just auditing" a course, when compared with the old requirement ("satisfactory progress") which appeared to imply that the worker must "perform" and "pass with satisfactory grades" to complete the program as required by the training institution. Although satisfactory progress in training is no longer an explicit

requirement, it is still necessary that a worker make sufficient progress so that the worker would benefit from the training, and so that there would be a reasonable expectancy of employment following completion of the training.

3. Weekly Amounts of TRA; Maximum Amount

(19 U.S.C. 2292, 2293; Sec. 232, 233 of the Trade Act; 20 CFR 617.13, 617.14, 617.15)

TRA weekly amount

The amount of TRA payable for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of UI (including dependents' allowances) payable to the individual for a week of total unemployment preceding the individual's first exhaustion of UI and following the individual's first qualifying separation. This means that the weekly amount of TRA shall be the same as the weekly amount of UI entitlement following a separation from adversely affected employment, regardless of whether such UI entitlement is from an existing UI claim that is reopened or a new claim that is filed as a result of such separation.

Exceptions to TRA weekly amount—

Increased TRA weekly amount. The TRA weekly amount will be increased when a worker is in TAA-approved training and is eligible for TRA and a training allowance under any Federal law for the training of workers and the training allowance amount is greater than the worker's TRA weekly amount. In such case, the worker will not receive the training allowance payment for weeks of unemployment for which he/she is eligible for TRA, but will receive a weekly (increased) TRA payment at the same weekly amount as the Federal training allowance.

Reduced TRA weekly amount. The TRA weekly amount will be reduced by: (1) any amount of income that is deductible from UI under the disqualifying income provisions of the applicable State or Federal unemployment compensation law; (2) the amount of a training allowance under any Federal law other than for the training of workers (this **does not apply to** Pell Grants, Supplemental Educational Opportunity Grants, Federal education loan programs, Presidential Access Scholarships, Federal student work-study programs, and Bureau of Indian Affairs Student Assistance); and (3) any amount that would be deducted from UI under the applicable State law for days of absence in approved training.

TRA maximum amount

The maximum amount of basic TRA payable under a certification shall be the amount determined by multiplying by 52 the weekly amount of TRA payable to such individual

for a week of total unemployment, and subtracting from the product derived, the total sum of UI to which the individual was entitled (or would have been entitled had the individual applied therefor) in the individual's first benefit period. The individual's full entitlement to UI shall be subtracted without regard to the amount, if any, that was actually paid to the individual with respect to such benefit period. This means that the total amount of UI monetary entitlement established during the first benefit period shall be reduced from the maximum amount of TRA, regardless of whether such amount was actually received or not. Thus, even if there was an outstanding balance from such UI entitlement that the individual did not receive or collect during such first benefit period, such amount shall be reduced from the maximum amount of TRA.

Exceptions to TRA maximum amount

The maximum amount of TRA payable to a worker under a certification will not include: (1) the amount of dependents' allowances paid as a supplement to the worker's base TRA weekly amount; (2) the amount of the difference between an increased TRA weekly amount paid the worker due the worker's eligibility for a training allowance under any Federal law for the training of workers and the worker's base weekly TRA amount; and (3) the amounts of additional TRA paid the worker to assist the worker in the completion of TAA-approved training.

Further, if the worker receives a training allowance under any Federal law other than for the training of workers (except for the Federal programs listed above on this page), each week the worker receives such Federal training allowance shall be deducted from the total number of weeks of TRA otherwise payable to the worker. If the amount of this training allowance is less than the worker's base TRA weekly amount, the worker will receive a TRA payment equal to the difference between the weekly training allowance amount and the worker's base TRA weekly amount.

In most cases, the calculation is 52 weekly payments of basic TRA, reduced by 26 weeks of UI monetary entitlement, which results in 26 weeks of basic TRA. Given that additional TRA is payable provided other requirements are met, the maximum amount of TRA (basic and additional) payable to any individual on the basis of a single certification is limited to the maximum amount of basic TRA plus additional TRA for a potential total of 78 weekly payments. Given the usual reduction for UI entitlement, payments usually are distributed as follows: 26 weeks of UI, 26 weeks of basic TRA, and 26 weeks of additional TRA.

SCENARIO 31

An adversely affected worker files for UI and is entitled to a weekly benefit amount of \$100 and a maximum benefit amount of \$2,600 during the first benefit period. This represents 26 weeks of UI. For purposes of TRA, the worker would be entitled to the most recent weekly benefit amount of UI (\$100) multiplied by 52, or \$5,200. This product shall be reduced by the total entitlement of UI, which results in \$2,600 (\$5,200 -

\$2,600). The worker is potentially entitled to 26 weeks of basic TRA at \$100, regardless of whether or not such worker actually receives the total UI entitlement during the first benefit period (UI exhaustion occurs by the actual receipt of all the monetary amount of UI benefits or the end of the first UI benefit period, whichever occurs first), and provided such TRA payments are made during the 104-week eligibility period. The worker is also potentially entitled to 26 weeks of additional TRA, provided that an application for TAA-approved training was timely filed and such worker participates in training.

SCENARIO 32

An adversely affected worker files for UI and is entitled to a weekly benefit amount of \$100 and a maximum benefit amount of \$2,000 during the first benefit period. This represents 20 weeks of UI. For purposes of TRA, the worker would be entitled to the most recent weekly benefit amount of UI (\$100) multiplied by 52, or \$5,200. This product shall be reduced by the total entitlement of UI, which results in \$3,200 (\$5,200 - \$2,000). The worker is potentially entitled to 32 weeks of basic TRA at \$100, regardless of whether or not such worker exhausts the total UI monetary entitlement (see explanation in Scenario 31 above) during the first benefit period, and provided such TRA payments are made during the 104-week eligibility period. The worker is also potentially entitled to 26 weeks of additional TRA, provided that TAA-approved training was timely filed and such worker participates in training.

SCENARIO 33

An adversely affected worker never applied for UI but applies for TRA after the “exhaustion” of such UI as a result of the expiration of the first benefit period. The worker will be entitled to 52 weeks of basic TRA less the total entitlement of UI the worker would have received had the worker applied for and been entitled to UI. Basic TRA shall be payable, provided that the 104-week eligibility period has not expired and other eligibility requirements are met. Twenty-six weeks of additional TRA are payable after exhaustion of basic TRA, provided that a TAA training application was timely filed and such worker participates in approved training, and other eligibility requirements are met.

4. TRA Disqualifications

(19 U.S.C. 2291(b), 2294, 2296(d); Sec. 231(b), 234, 236(d) of the Trade Act; 20 CFR 617.16, 617.18)

An individual shall not, except as stated below, be paid TRA for any week of unemployment the individual is or would be disqualified from receipt of UI under the disqualification provisions of the applicable State law, including the State law provisions that apply to EB claimants (19 U.S.C. 2294).

However, a State law shall not be applied to disqualify an individual from receiving UI and TRA because the individual: (1) is enrolled in, or participating in, TAA-approved training; or (2) refuses work to which the individual has been referred by the State agency, if such work would require the individual to discontinue TAA-approved training, or if added to hours of training would occupy the individual more than 8 hours a day or 40 hours a week; or 3) quits work, if the individual was employed in work which was not suitable, and it was reasonable and necessary for the individual to quit work to begin or continue TAA-approved training (19 U.S.C. 2296(d)).

An individual who, without justifiable cause, fails to begin participation in a TAA-approved training program, or ceases to participate in such training, or for whom a waiver of the training program is revoked, as discussed below, shall not be eligible for basic TRA for the week in which such failure, cessation, or revocation occurred, or for any succeeding week thereafter until the week in which the individual begins or resumes participation in a TAA-approved training program. "Failed to begin participation" in a TAA training program is when the worker fails to attend all scheduled training classes and other training activities in the first week of the training program without justifiable cause. "Ceased participation" in a TAA-approved training program is the same as the failure to begin participation in training, but for any week during the duration of training, without justifiable cause. "Justifiable cause" are reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to participate in or complete a TAA-approved training program (19 U.S.C. 2291(b)).

Finally, TRA is not payable for any week in which the worker is engaged in on-the-job training.

SECTION III - TRADE ADJUSTMENT ASSISTANCE (TAA) TRAINING

1. Approval of Training

(19 U.S.C. 2296; Sec. 236 of the Trade Act; 20 CFR 617.22)

Training shall be approved for an adversely affected worker if the State agency determines that:

- a) there is no suitable employment available for an adversely affected worker;
- b) the worker would benefit from appropriate training;
- c) there is a reasonable expectation of employment following completion of such training;
- d) training approved is reasonably available to the worker from either governmental agencies or private sources;
- e) the worker is qualified to undertake and complete such training; and
- f) such training is suitable for the worker and available at a reasonable cost.

To elaborate on the preceding criteria, further discussion follows:

Paragraph a means that no suitable employment is available for the worker either within the commuting area or in an area outside the commuting area to which the worker would like to relocate. Furthermore, there are no reasonable prospects of such employment within the foreseeable future.

Paragraph b means that there is a direct relationship between the needs of the worker for skills training or remedial education and a training program. The worker also must have the physical and mental capabilities to undertake, make satisfactory progress in, and complete training. A further criterion is that the worker will be job ready upon completion of the training program.

Paragraph c means that a fair and objective projection of the job market conditions expected to exist at the time of the completion of the training program indicates a reasonable expectation that the worker will find employment with the newly-acquired skills. This assessment does not require that employment opportunities for the worker be available or offered immediately upon the completion of the approved training.

Paragraph d means that training is reasonably accessible to the worker within the commuting area, although not precluding training outside the commuting area if none is available in the former. First consideration shall be given to training opportunities within the commuting area. Training outside the commuting area should be approved only if such training is not available within the commuting area, or if the training outside the commuting area will be provided at a lesser total cost to TAA funds. Such training opportunities may also include on-the-job training with an employer.

Paragraph e refers to the worker's personal qualifications, which must include physical and mental capabilities, educational background, work experience, and financial resources to undertake and complete the specific training program being considered. The worker's financial resources require an evaluation of the remaining weeks of UI and TRA in relation to the duration of the training program. If the training program is longer in duration than the total entitlement of UI and TRA, the State agency must ascertain whether personal or family resources will be available to such worker to complete the training. Training shall not be approved if there are not adequate financial resources available to the worker to complete a training program which has a duration beyond the UI and TRA entitlement. Other training programs should be considered if this is the case. This is an important consideration, and it must be emphasized that all cases should be determined on a case-by-case basis. This is important because it would not make sense to approve a training program if it is anticipated that the worker might withdraw from participation and, thus, not complete the program due to lack of financial resources once the total entitlement to UI and TRA is exhausted.

Under **paragraph f**, suitability means that training is appropriate for the worker based on his/her capabilities, background, and work experience, as discussed under paragraph e above. "Available at reasonable cost" means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content, and results can be obtained from another provider at a lower total cost within a similar time frame. Other sources of funding for TAA training must be taken into consideration when assessing the total cost of training. Reasonable costs of training include tuition and related expenses (books, tools, and academic fees), travel or transportation expenses, and subsistence expenses. When training of substantially similar quality, content, and results is offered at more than one training provider, the lowest cost training shall be approved.

An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of training are substantially higher than the costs of other training which is suitable for the worker. Training previously approved under State law or other authority is not automatically approved TAA training. Such training may be approvable TAA training if it meets conditions a through f above. If the State agency approves any such State-approved training as TAA training, such approval shall not be retroactive for any of the purposes of the TAA program, including training costs and payment of TRA. There is one exception

to this rule in the case of a redetermination or decision reversing a determination which originally denied the approval of TAA training. In this latter case, only training costs which were actually incurred may be paid. In the case of additional TRA, it may be paid only if the worker participated in such training.

The State agency shall determine the appropriate length of TAA-approved training and the hours of attendance (keeping in mind that TAA approved training must be full-time). The training shall be of suitable duration to achieve the desired skill level in the shortest possible time frame (training may consist of a single course or a group of courses). No training program shall last more than 104 weeks, during which training is actually conducted; this means that these weeks do not have to be consecutive weeks. No training program may be approved that is conducted totally or partially outside of the United States. Finally, only one TAA training program is allowed per worker under a single certification.

2. Waiver of Participation in Training

(19 U.S.C. 2291(a)(5)(C), (b), (c); Sec. 231(a)(5)(C), (b), (c) of the Trade Act; 20 CFR 617 .11(a)(2)(vii), 617.19)

A waiver of participation in TAA-approved training is issued when the State agency has enough supporting information to conclude that it is not “feasible” or “appropriate” to approve a training program for the individual. The individual shall be furnished a formal written notice of waiver (20 CFR 617.19(a)(2)), with an explanation of the reason(s) for the waiver and a statement explaining why training is not feasible or is not appropriate. Likewise, in the event that a waiver is denied, the individual shall be furnished a written notice of the denial. Once an individual receives a written notice waiving the TAA training requirement, such individual shall be subject to the EB work test.

“Feasible” means that: (1) a TAA-approvable training program is available; (2) the individual is positioned to take full advantage of the training opportunity and complete the training; and (3) funding is available to pay the full cost of the training and any transportation and subsistence payments. TAA training is *“not feasible”* when: (1) the beginning date of approved training is beyond 30 days as required by the description of “enrolled in training;” (2) training is not reasonably available to the individual; (3) training is not available at a reasonable cost; (4) funds are not available to pay for the total costs of training; (5) personal circumstances such as health or financial resources preclude participation in training or satisfactory completion of training; or (6) any other reason(s) which must be followed by an explanation of the specific circumstances as to why training is not feasible, consistent with the objective criteria specified in 1 through 5 above. *It is important that for training to be feasible, all three conditions enumerated above must be met.* Conversely, for training to be not feasible, only one of the conditions enumerated must be present.

“Appropriate” refers to the suitability of the training for the worker and the compatibility of the training for purposes of the TAA program. TAA training approval is *“not appropriate”* when: (1) the firm from which the individual was separated plans to recall the individual within the reasonably foreseeable future (State agencies must verify planned recalls with the employer); (2) the duration of training suitable for the individual exceeds the individual’s maximum entitlement to basic and additional TRA, and such individual cannot assure financial responsibility for completing the training program; (3) the individual possesses skills for suitable employment, and there is a reasonable expectation of employment in the foreseeable future; or (4) any other reason(s), which must be followed by an explanation of the specific circumstances as to why training is not appropriate, consistent with the objective criteria specified in 1 through 3 above.

State agencies must have a procedure for periodically/regularly reviewing all waivers issued to individuals to ascertain that the conditions upon which such waivers were granted continue to exist. If the conditions have changed and training has become feasible or appropriate, the waiver must be revoked, and a written notice of revocation shall be furnished to the individual involved.

3. Scheduled Breaks in Training

(19 U.S.C. 2293(f); Sec. 233(f) of the Trade Act; 20 CFR 617.15(d))

An individual who is otherwise eligible for basic and additional TRA may continue to be eligible during scheduled breaks in training, but only if a scheduled break is not longer than 14 days and:

- a) the individual was participating in TAA-approved training immediately before the beginning of the break;
- b) the break is provided for in the published schedule or the previously established schedule of training issued by the training provider or is indicated in the training program approved for the worker; and
- c) the individual resumes participation in the training immediately after the break ends.

The scheduled breaks in training shall include all periods within or between courses, terms, quarters, semesters, and academic years of the approved training program. No basic or additional TRA may be paid to an individual for any week which begins and ends within a scheduled break that is 15 days or more. The days within a break in a training program shall be counted by including all calendar days beginning with the first day of the break and ending with the last day of the break, as provided for in the training provider’s schedule, except that any Saturday, Sunday, or official State or National holiday occurring during the scheduled break shall not be counted in determining the

number of days of the break.

One important point is that consistent with the UI principle of “payable when due” (see section 303(a)(1) of the Social Security Act), payment of TRA during a scheduled break in training must be issued timely if the break is determined to be 14 days or less; TRA payments must not be interrupted unless and until the State agency determines that the break was greater than 14 days. If the individual does not resume the training program after a break of 14 days or less and has received TRA payments, then such payments become overpayments.

Finally, the maximum amount of basic TRA payable is not affected by the weeks the worker does not receive TRA while in a break period that is determined to be 15 days or longer. The weeks will, however, count against the 104-week eligibility period. Further, during a period in which the worker is receiving additional TRA, any weeks for which TRA is not paid, as a result of the break in training being 15 days or longer, still will count against the consecutive 26-week eligibility period and the number of weeks payable.

SCENARIO 34

A training institution has a scheduled break in training in its published catalog beginning at the end of training on Friday, December 18, 1998, and ending with the resumption of training on Tuesday, January 12, 1999. Although there are 24 full calendar days between the beginning of the break and the resumption of training, the break (as explained below) meets the 14 days or less requirement for payment of TRA. The worker will receive a payment for the week ending on Saturday, December 19, 1998. Saturdays and Sundays are not counted in the length of the scheduled break in training; therefore, the count begins on Monday, December 21, 1998.

For the week ending on Saturday, December 26, the count is 4 days (Monday through Thursday as Friday, December 25 is an official holiday). For the week ending on Saturday, January 2, the count is 4 days (Monday through Thursday as Friday, January 1 is an official holiday). For the week ending Saturday, January 9, the count is 5 days. Training resumes on Tuesday, January 12 and, therefore, Monday, January 11 is the final day. The break in training was 14 days or less by this count, and, therefore, the worker will be entitled to payment for TRA, provided such worker resumes training on Tuesday, January 12.

SCENARIO 35

In this scenario, the same facts exist as in Scenario 34 on the previous page, except that training resumes on Wednesday, January 13. In this case, the scheduled break is 15 days, and, therefore, the worker will not be entitled to TRA during the break. The worker’s last TRA payment preceding the break will be for the week ending Saturday, December 19. The worker will resume entitlement to TRA once such worker resumes

training.

SECTION IV - ADMINISTRATION

1. Benefit Information to Workers

(19 U.S.C. 2275, 2311(e), 2311(f); Sec. 225, 239(e) and (f) of the Trade Act; 20 CFR 617.4)

State agencies shall provide full information to workers about the benefit allowances, training, and other employment services available under the TAA program. State agencies shall also provide whatever assistance is necessary to enable workers to prepare petitions or applications for program benefits. Furthermore, State agencies shall provide a written notice through the mail to each worker reasonably believed to be covered under a certification of group eligibility issued by the Department of Labor. State agencies shall also publish a notice of such certification in a newspaper of general circulation in areas in which such workers reside, unless State agencies can substantiate and enter in their records evidence that substantiates that all workers covered by the certification have received a written notice of benefit availability.

Although State agencies must comply with these requirements, there is no provision under the law or under the regulations to grant any remedy to covered workers (good cause or not) in the event that State agencies fail to carry out these requirements. This means that if workers fail to meet any requirement based on lack of information or erroneous information provided by State agencies, there are no remedies which could waive such requirement, and, thus, enable these workers to become eligible.

2. Agreements

(19 U.S.C. 2311, 2312; Sec. 239, 240 of the Trade Act; 20 CFR 617.59)

A State or State agency shall execute an Agreement with the Secretary of Labor to deliver the TAA program services to individuals within a State's jurisdiction. A State or State agency which has executed such Agreement shall be considered an agent of the United States and shall carry out the purposes of the Trade Act and the implementing regulations. This Agreement is usually signed by the governor of the State, but it may be signed instead by an authorized official within the State or the State agency. In the latter case, the State's attorney general or the State agency's counsel shall certify as to the authority of the signatory that has executed the Agreement on behalf of the State or State agency.

Article II of the Agreement provides, in part, that "the functions and duties undertaken pursuant to this Agreement will be performed by the State or State agency in accordance with the Trade Act, the regulations, and the procedures prescribed thereunder."

3. Determinations

(19 U.S.C. 2311(d), 2312; Sec. 239(d), 240 of the Trade Act; 20 CFR 617.50)

The State agency shall, upon the filing of an initial or subsequent application for TRA or other TAA benefits, promptly determine or redetermine an individual's entitlement and the amounts payable to such individual. The provisions of the applicable State law under which the filing of TAA benefits occurs shall, except where they conflict with Federal law requirements, govern the procedures for determinations and/or redeterminations of entitlement to all forms of TAA benefits.

A State agency, a hearings officer, or a State court shall apply the applicable State law and regulations thereunder, including procedural requirements of such State law and regulations, except where such State law or regulations are inconsistent with the Trade Act of 1974, as amended, and the implementing regulations at 20 CFR Part 617. No provision of State law or regulations on good cause for waiver of any time limit, or for late filing of any claim, shall apply to any time limitation referred to or specified in the regulations unless such State law or regulation is made applicable by a specific provision of the Federal program regulations.

Full payment of TAA benefits when due shall be made with the greatest promptness that is administratively feasible. The State agency shall notify the individual in writing of any determination or redetermination as to entitlement to TAA. Each determination or redetermination shall inform the individual of the reason(s) for the determination or redetermination and of the right to reconsideration or appeal in the same manner as determinations of entitlement to UI are subject to redetermination or appeal under the applicable State law. The procedures for making and furnishing determinations and written notices of determinations to individuals shall be consistent with the Secretary's "Standard for Claim Determinations--Separation Information," Employment Security Manual, Part V, sections 6010-6015 (20 CFR 617 Appendix B).

4. Appeals and Hearings

(19 U.S.C. 2311(d), 2312(b); Sec. 239(d), 240(b) of the Trade Act; 20 CFR 617.51)

A determination or redetermination shall be subject to review in the same manner and to the same extent as determinations or redeterminations under the applicable State law. The procedures as to the right of appeal and opportunity for fair hearing shall be consistent with sections 303(a)(1) and (3) of the Social Security Act, 42 U.S.C. 503(a)(1) and (3). Appeals shall be decided with a degree of promptness meeting the Secretary's "Standard for Appeals Promptness--Unemployment Compensation." (20 CFR Part 650).

5. Overpayments; Penalties for Fraud

(19 U.S.C. 2315, 2316; Sec. 243, 244 of the Trade Act; 20 CFR 617.55)

If a State agency or a court of competent jurisdiction determines that any individual has received any TAA benefits (training, relocation, job search) or TRA to which such individual was not entitled, including a fraudulent payment, such individual shall be liable to repay such amount to the State agency. The State agency shall recover these overpayments in accordance with the TAA regulations and the guidelines (which are explained below) except where a waiver of the recovery of any overpayment is warranted in accordance with the same guidelines.

In accordance with 20 CFR 617.55 (a)(2)(ii)(C)(5), TRA overpayments may be recovered by deduction from any sums payable under TRA, Federal unemployment compensation, or other Federal benefits paid with respect to unemployment under a program administered by the State agency, and, if appropriate, State UI. However, in accordance with section 243(a)(2) of the Trade Act, "...no single deduction under this paragraph [meaning deduction from TRA or other Federal unemployment benefits, or State UI benefits] shall exceed 50 percent of the amount otherwise payable." (Emphasis added.) Under the TAA program requirements, the applicable State law may provide for a lesser percentage that can be offset, and the applicable State law provisions for offset may be applied to recover TAA overpayments. Further information on this matter is provided in Unemployment Insurance Program Letter (UIPL) No. 23-87, Attachment II, Section V, Questions & Answers (A and B) addressing recovery of TRA overpayments and the 50 percent offset limitation.

The recovery of an overpayment may be waived if the payment was made without fault on the part of the individual and requiring such repayment would be contrary to equity and good conscience. **Please note that a determination to waive the recovery of an overpayment of TAA benefits must be made in accordance with the Federal guidelines established in the TAA regulations concerning fault and equity and good conscience and not based on State law or on any regulatory guidelines issued by the State agency.**

In determining whether fault exists, the following factors shall be considered:

- a) whether a material statement or representation was made by the individual in connection with the application for TAA benefits that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate;
- b) whether the individual failed or caused another to fail to disclose a material fact in connection with an application for TAA that resulted in the overpayment, and whether the individual knew or should have known that the fact was material;
- c) whether the individual knew or could have been expected to know that the

individual was not entitled to the TAA payment;

- d) whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong; and
- e) whether there has been a determination for fraud.

The preceding language is found at 20 CFR 617.55(a)(2)(i)(A)(1)-(5). An affirmative finding on any one of the factors above constitutes that the individual was “at fault,” and, therefore, precludes a waiver of the overpayment recovery, and no further evaluation of the case is needed. “At fault” means that the individual provided information or contributed to the information that was used in issuing a determination/decision which resulted in the overpayment.

If no affirmative finding has been made on any of the above factors, it may be determined that the overpayment was caused without fault on the part of the individual. After determining that the overpayment was not the fault of the individual, the next consideration is whether requiring repayment is contrary to equity and good conscience.

In determining whether equity and good conscience exists, the guiding principle is whether recovery of the overpayment will not cause extraordinary and lasting financial hardship to the individual. If an affirmative finding is made that extraordinary and lasting financial hardship will not result by the recovery of the overpayment, the waiver is precluded.

In conclusion, two factors are operating in lock-step for the issuance of a waiver of the recovery of the overpayment, and both must be met. *First, a finding must be made that the overpayment was not caused by any action (fault) on the part of the individual. If this requirement is met, the second factor is whether recovery will result in an extraordinary and lasting financial hardship; if the answer is in the affirmative, the waiver will be granted.*

An extraordinary and lasting financial hardship exists if recovery of the overpayment would result directly in the individual’s loss or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time. The hardship must be expected to last for the foreseeable future. A substantial period of time is 30 days, and the foreseeable future is at least three months. If the recoupment would be from other benefits rather than repayment of the overpayment in question, a substantial period of time and the foreseeable future is the longest potential period of benefit entitlement as seen at the time of the request for a waiver determination. The State agency shall also take into account all potential income of the individual and the individual’s firm, organization, or family, and all cash resources available to the individual, the firm,

organization, or family in the time period being considered.

Determinations granting or denying a waiver shall be made only on request for a waiver determination. The State agency has the option as to whether the waiver provisions as described in the regulations shall be applied to TAA overpayments. This means that a State agency may decide not to implement these Federal waiver recovery provisions of the Trade Act. If the State agency does exercise the option to apply these waiver provisions, such provisions must be implemented in accordance with program regulations and independent of any waiver of overpayment recovery under State law for regular UI, if applicable.

No waiver of the recovery for an overpayment may be granted if it is determined that the reason for such overpayment was fraud committed by the individual. Fraud exists when the State agency or a court of competent jurisdiction finds that an individual:

- a) knowingly made or caused another to make a false statement or representation of a material fact; or
- b) knowingly failed or caused another to fail to disclose a material fact; and as a result of such false statement or representation, or of such non-disclosure, such individual has received any payment to which the individual was not entitled.

The individual committing fraud shall, in addition to any other penalties provided by law, be ineligible to receive any further TAA benefits. This means that no payments will ever be made to this individual even if such individual qualifies under another TAA certification. In essence, this is a total lifetime ban from program benefits.

6. Uniform Interpretation

(19 U.S.C. 2320; Sec. 248 of the Trade Act; 20 CFR 617.52, 617.59(f))

To assure the uniform interpretation of the Trade Act throughout the nation, State agencies shall forward to the Department, not later than 10 days after issuance, a copy of any judicial or administrative decision ruling on an individual's entitlement. The Department also may request a copy of any determination or redetermination ruling on an individual's entitlement to TAA program benefits.

If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Trade Act or 20 CFR Part 617, the Department may notify the State agency of its view (the same applies to determinations and decisions which are patently and flagrantly violative of the Act) . The State agency shall issue a redetermination or pursue an appeal, if possible, and shall not follow such determination, redetermination, or decision as precedent. The State agency shall inform the claims deputy or hearing officer, or court, of the Department's view, and shall make all reasonable efforts, including an appeal or other proceedings in

an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision. If an erroneous decision awards TAA benefits, payment is due unless the State agency takes certain actions described in 20 CFR 617.52(c)(2)-(3) of the regulations. A State agency may issue a request to the Secretary for reconsideration of a notice issued as described in this paragraph and shall be given an opportunity to present views and arguments.

In the case of any determination, redetermination, or decision that is not legally warranted, the Secretary will decide whether the State shall be required to restore the funds of the United States for any funds paid under such a determination, redetermination, or decision, and whether in the absence of such restoration, the agreement with the State shall be terminated. If any determination, redetermination, or decision is treated as a precedent for any future application for TAA benefits, the Secretary will decide whether the agreement with the State entered into under the Act shall be terminated because the State or State agency has not fulfilled its commitment under the agreement. If the Secretary decides to terminate the agreement, section 3302(c)(3) of the Internal Revenue Code of 1986 shall apply. The State or State agency shall receive reasonable notice and opportunity for a hearing before a finding is made under section 3302(c)(3).

A uniform interpretation of the Trade Act is required because TAA is a Federal program. Therefore, all States or State agencies, as agents of the United States, must adhere to Article II of the Agreement and deliver services to eligible individuals in the same manner as stipulated under the Act and the implementing regulations. The regulations provide for the application of certain procedures under the applicable State law, except where inconsistent with the Trade Act and the applicable regulations.

The Department will notify the State or State agency of any erroneous determination, redetermination, and/or decision by the latter when such is the case. The State or State agency shall attempt to remedy the situation by seeking redetermination or appeal to the next level of review, if possible. This includes appeals through a State agency, a board of review, and other higher appellate bodies as well as within the State's courts system. The State itself is a party to the Agreement executed by the duly authorized parties (State Governor on behalf of the State, and Secretary of Labor on behalf of the United States) and as such shall adhere to the Department's interpretation for compliance with the Trade Act and the implementing regulations which are part of the Agreement.

The Department recognizes that the States and State agencies, may, at times, be required to pursue actions which might conflict with State law and procedures, but Federal law and regulations govern the administration of the TAA program. The States and the State agencies must follow the uniform interpretation of the Trade Act not only to avoid a breach of the Agreement, but also to avoid restoration of Federal funds which were improperly paid as a result of an erroneous determination, redetermination, and decision, as well as other penalties which could be imposed as a result of such actions. The Department will provide technical assistance to the States and State agencies to

assist them in carrying out their duties of delivering TAA program benefits under the Agreement consistent with a uniform interpretation of the Trade Act and regulations.

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