EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL OTAA
	DATE February 4, 2011

ADVISORY: **TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 16-10, CHANGE 2**

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
ONE-STOP CENTER SYSTEM LEADS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS

FROM: JANE OATES
Assistant Secretary

SUBJECT: Instructions for Operating the Trade Adjustment Assistance Program after the Termination of the Trade and Globalization Adjustment Assistance Act Amendments on February 12, 2011- Program Reverts to 2002 Amendments

1. Purpose. Training and Employment Guidance Letter (TEGL) No. 16-10, Change 2, instructs the State Workforce Agencies or agencies designated by Governors as "Cooperating State Agencies" (CSAs) (also jointly referred to as "states") to operate the Trade Adjustment Assistance program (TAA) after February 12, 2011 under the provisions of the Trade Act in effect before the TGAAA.

2. References. The Omnibus Trade Act of 2010 (Pub. L. No. 111-344, enacted December 29, 2010) (Omnibus Trade Act); The Trade and Globalization Adjustment Assistance Act of 2009, Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, (Pub. L. No. 111-5, enacted February 17, 2009) (TGAAA or 2009 Amendments); Trade Adjustment Assistance Reform Act of 2002, Division A Title I, Subtitle A of the Trade Act of 2002, (Pub. L. No. 107-210) (2002 Amendments); the Trade Act of 1974, as amended (Pub. L. No. 93-618, as amended) (Trade Act); Wagner-Peyser Act, as amended (29 U.S.C. 49 et seq.) (Wagner-Peyser); the Workforce Investment Act of 1998, as amended (Pub. L. No. 105-220) (29 U.S.C. 2801 et seq.) (WIA); 20 CFR Part 617; 29 CFR Part 90; 20 CFR Part 618; Training and Employment Guidance Letter (TEGL) No. TEGL 6-09: Instructions for Implementing the Revised 2010 Trade Adjustment Assistance Trade Activity Participant Report (TAPR); TEGL No. 9-09, Fiscal Year (FY) 2010 State Initial Allocations and the Process for Requesting Additional Trade Adjustment Assistance (TAA) Program Reserve Funds; TEGL No. 22-08 and Change 1, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009; TEGL No. 4-08 and Change 1, Fiscal

RESCISSIONS: NONE	EXPIRATION DATE: Continuing

Year (FY) 2009 State Supplemental Training Fund Distributions Including Case Management Funds and the Process for Requesting Additional Trade Adjustment Assistance (TAA) Program Reserve Funds; TEGL No. 11-02, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, and Changes 1, 2, and 3; TEGL No. 2-03, Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002, and Change 1; TEGL No. 5-00, Attachment B, Guidance on Integrating Services under the Trade Act Programs - Trade Adjustment Assistance (TAA) and North American Free Trade Agreement - Transitional Adjustment Assistance (NAFTA-TAA) - with the Services Provided under the Workforce Investment Act (WIA) and the Paperwork Reduction Act of 1995 (P.L. 104-13); and TEGL 16-10, Instructions for Phasing Out Changes to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, and Change 1.

3. Background. The TAA program for workers, under chapter 2 of title II of the Trade Act (19 U.S.C. 2271 et seq.), provides adjustment assistance for workers whose jobs have been adversely affected by international trade. The TAA program was first established by the Trade Act of 1974, and has been amended numerous times over the past thirty-seven years. The latest substantive amendments, referred to as the 2009 Amendments, are contained in the TGAAA. Before the 2009 Amendments, the program was operated under the provisions of Trade Act, as amended primarily by the 2002 Amendments.

The Omnibus Trade Act extended the application of the 2009 Amendments for six weeks, through February 12, 2011. After that date, the Act provided for a reversion to the law in effect before the 2009 Amendments, and authorized the appropriation of funds for the Department to carry out the reverted program for one additional year (through February 12, 2012), including a specific provision extending a small component of that program—the alternative TAA program for older workers (ATAA)—for one year (through February 12, 2012). However, the termination provision, if read literally, terminates benefits under the reverted program on the same day it begins. This inconsistency renders the statute ambiguous. To avoid an illogical and absurd result, and reading the Omnibus Trade Act as a whole, the Department interprets the Act as extending the TAA program in effect before the 2009 Amendments after February 12, 2011 through February 12, 2012.

Because February 13, 2011 is a non-business day, the Department of Labor provided notice that it will accept petitions received on or before February 14, 2011 as filed by February 12, 2011, and process these petitions under the certification requirements of the 2009 Amendments. Workers covered by those petitions may be eligible for TAA benefits and services provided under the 2009 Amendments. Petitions received starting February 15, 2011 will be considered filed after the Omnibus Trade Act deadline, and therefore governed under the 2002 Amendments. Workers covered by those petitions may be eligible for TAA benefits provided under the 2002 Amendments, including but not limited to the ATAA wage subsidy for certain reemployed older workers.

4. Instructions. In order to implement the expiration provisions of the Omnibus Trade Act, States will serve workers in the TAA program covered by petitions received by the Department after February 14, 2011, under the provisions of the 2002 Amendments, as if the 2009 Amendments never existed. However, recent regulatory changes to program administration and

funding codified at 29 CFR part 618 and reporting required through the revised TAPR will continue to apply.

In order to help states determine whether either the 2009 Amendments or the 2002 Amendments govern benefits and services for a specific worker, the Department will once again start a new petition number series. Workers covered by the 2002 Amendments before the 2009 Amendments went into effect are identified by petition numbers ranging from 50,000 to 69,999. Workers covered by the 2009 Amendments are identified by petition numbers ranging from 70,000 to 79,999. The Department will identify petitions received after February 14, 2011, and therefore covered under the 2002 Amendments, with petition numbers greater than 80,000. Therefore, as previously described in TEGL No. 16-10, CSAs will be required to manage benefits and services for three distinct cohorts of workers:

i. Workers covered by petitions filed on or before May 17, 2009, identified by a petition number lower than 70,000. These workers are subject to the provisions of the 2002 Amendments, as implemented in TEGL No. 11-02 and Changes, 1, 2, and 3; TEGL No. 2-03, and Change 1; as well as regulations codified at 20 CFR parts 617 and 618, and 29 CFR part 90.

ii. Workers covered by petitions filed on or after May 18, 2009, and on or before February 14, 2011, identified by petition numbers between 70,000 and 79,999. These workers are subject to the provisions of the 2009 Amendments as implemented in TEGL No. 22-08 and Change 1; TEGL 16-10 and Change 1; as well as regulations codified at 20 CFR parts 617 and 618, and 29 CFR part 90.

iii. Workers covered by petitions received after on or after February 15, 2011, identified by a petition number greater than or equal to 80,000. These workers are subject to the provisions of the 2002 Amendments as implemented in TEGL No. 11-02, and Changes 1, 2, and 3; and TEGL No. 2-03, and Change 1; as well as regulations at 20 CFR parts 617 and 618 and 29 CFR part 90.

Petition is Received by OTAA Before May 17, 2009 AND Assigned a Petition Number Equal to and Lower than 69,999	**Petition is Received by OTAA On or After May 18, 2009 and On or Before February 14, 2011 AND Assigned a Petition Number Between 70,000 and 79,999**	**Petition is Received by OTAA After February 14, 2011 AND Assigned a Petition Number Greater Than or Equal to 80,000**
Eligible workers are entitled to receive TAA benefits and services under the 2002 Amendments	Eligible workers are entitled to receive TAA benefits and services under the 2009 Amendments	Eligible workers are entitled to receive TAA benefits and services under the 2002 Amendments

In addition, funds designated for expenditure on employment and case management services may only be expended to provide those services for workers covered by the 2009 Amendments. Workers covered by the 2002 Amendments are not entitled to TAA-funded employment and case management services, although states are required to make every reasonable effort to secure those services through other Federal programs.

The Department strongly recommends that petitioners who wish to be considered for TAA benefits and services at the 2009 level file early and file online or by fax to ensure petition receipt on or before 11:59 PM EST on Monday, February 14, 2011.

A petition is filed in time to be considered for TAA if it is received:

- Via mail at the Office of Trade Adjustment Assistance at Employment and Training Administration (ETA), United States Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210 on or before 5:00 PM EST Monday, February 14, 2011.

- Via fax to 202-693-3585 on or before 11:59 PM EST Monday, February 14, 2011. The Department strongly suggests that petitioners retain the fax cover sheet with the date and time stamp.

- Via online petition processing located on the OTAA's website, www.doleta.gov/tradeact, and a confirmation email generated by the system is sent to the worker that indicates the petition was received in the Office of Trade Adjustment Assistance on or before 11:59 PM EST Monday, February 14, 2011.

As long as a petition is received on or before 11:59 PM EST on Monday, February 14, 2011, the fact that it is certified after that date does not affect covered workers' eligibility to apply for benefits. The date and time in the EST time zone controls whether a petition is timely.

4. Action Requested. CSAs will be required to manage benefits and services provided to TAA program participants as described above beginning February 15, 2011. States will be notified if the sunset provisions of the TGAAA are extended to allow the 2009 Amendments to continue to apply after 11:59 PM EST February 14, 2011.

5. Inquiries. State Administrators should direct all inquiries to the appropriate Employment and Training Administration Regional Office.