New Trade Adjustment Assistance Program
AFL-CIO Analysis of Key Provisions

Background

The "Trade Adjustment Assistance Reform Act of 2002" amends and reauthorizes the current Trade Adjustment Assistance Program and repeals the NAFTA Transitional Adjustment Assistance Program. The new consolidated TAA program is authorized through September 30, 2007.

Summaries of Key Provisions

The summaries, which follow, have been prepared to describe the following key provisions of the new TAA legislation:

1. Trade Adjustment Assistance Program
2. Demonstration Project for Alternative Trade Adjustment Assistance for Older Workers
3. Credit for Health Insurance Costs of Eligible Individuals
4. Health Insurance Assistance Program for Eligible Individuals Through the Workforce Investment Act
5. Trade Adjustment Assistance Programs for Firms, Farmers and Fishermen (not included)

Additional Attachment

A list of designated beneficiary countries under current trade agreements and trade preference programs is included on the last page.

Summary # 1
New Trade Adjustment Assistance Program

Who can file a petition?

The number of groups who can file a petition for TAA certification has been expanded. Petitions for certification can be filed simultaneously with the Governor and the Secretary of Labor by any of the following:

- Group of workers
- Certified or recognized union
- Employers of affected workers
- One-Stop operators/partners
- State Employment Security Agencies
- State dislocated worker unit

How long does the Secretary of Labor have to make a decision on a petition for certification?

Upon filing the petition, the Secretary of Labor has 40 days to make a decision.

What are the Governor's responsibilities?

The Governor has the following responsibilities:

- Ensure that rapid response, core and intensive services under WIA are provided to workers covered by the petition
- Assist the Secretary in review of the petition by verifying information and other assistance as required by the Secretary

What are the eligibility criteria?

The new legislation extended coverage of TAA to the following categories of workers:

- Workers in firms directly *affected by imports*
- Workers in firms who *shifted production* to another country that has a free trade agreement with the United States; that has a unilaterally preferential trading arrangement with the United States, or when there has been, or is likely to be, an increase in imports of the relevant articles.
- Workers in *supplier firms* that supply component parts to a firm that has been certified as eligible
- Workers in *downstream firms* who provide "value-added" production for a firm that either shifted production to, or was affected by imports from, Mexico or Canada

1. Eligibility criteria for workers in directly affected firms

A. For firms affected by imports, a group of workers shall be certified as eligible if:

- A significant number of proportion of the workers in a firm (or subdivision) have become totally or partially separated or are threatened to become totally or partially separated;
- The sales or production, or both, of the firm have decreased absolutely,
- Imports of articles like or directly competitive with articles produced by the firm have increased and
- The increase contributed importantly to the workers' separation or threat of separation and to the decline in sales or production.

B. For firms affected by a shift in production, a group of workers shall be certified as eligible if:

- There has been a shift in production by the workers' firm, or subdivision, to a foreign country of articles like or directly competitive with articles that are produced by such firm, and

- The country to which the workers' firm has shifted production is a party to a free trade agreement with the United States,
- The country to which the workers' firm has shifted production is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act, (*refer to listing on last page for countries that are currently covered under the various trade arrangements), or
- There has been or likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision

<u>2. Eligibility criteria for workers in firms that are suppliers or downstream producers</u>

A group of workers shall be certified if:

- A significant number or proportion of workers in the firm, or subdivision, have become totally or partially separated;
- The workers' firm, or subdivision, is a supplier or downstream producer to a firm, or subdivision, that employed a group of workers who received a certification of eligibility (as a primary firm) and the supply or production is related to the article that was the basis for such certification, and either
- The workers' firm is a supplier and the component parts it supplied to the primary firm accounted for at least 20% of the production or sales of the workers' firm, or
- A loss of business by the secondary workers' firm with the primary firm contributed importantly to the workers' separation or threat of separation.

What are the definitions for supplier and downstream producer?

<u>Supplier</u>

A firm that produces and supplies directly to another firm, or subdivision, component parts for articles that were the basis for a certification of eligibility for the primary firm.

<u>Downstream Producer</u>

A firm that performs additional, value-added production processes for a firm or subdivision, including a firm that performs final assembly or finishing, directly for another firm for articles that were the basis for a certification of eligibility if the certification of eligibility is based on an increase in imports from, or a shift in production to, Canada or Mexico.

How are TAA programs administered?

The Secretary of Labor is authorized to enter into agreements with any state or any state agency (defined as the state agency administering the Unemployment Insurance program). Under this agreement the state agency acts as an agent of the United States to receive applications for and provide payments to affected workers. Each state agency is to:

- Advise each worker who applies for unemployment insurance of the benefits of the program
- Facilitate the early filing of petitions
- Advise and interview each worker regarding suitable training
- Pursuant to a state agreement the Secretary can authorize the state to issue waivers

What are the qualifying requirements for workers to receive TAA benefits?

Workers certified by the Secretary of Labor as eligible for TAA can receive training, income support and certain health coverage if they meet certain qualifying requirements if they meet requirements for enrollment in training. Workers can receive trade adjustment allowances if they are enrolled in training by:

- The 16th week after the most recent total separation from the affected employment, or
- The 8th week in which the Secretary issues a certification covering the worker,

- A 45 day extension after the later of either of the above is possible if the Secretary determines there are extenuating circumstances that justify an extension of the enrollment period, or a period of time determined by the Secretary after the expiration of a waiver

Can the enrollment in training requirements be waived?

The Secretary of Labor may issue a waiver of the training requirements if the Secretary determines that training is *not feasible or appropriate* for the worker because of one or more of the following reasons:

- *Recall* – the worker has received notice of recall.
- *Marketable Skills* – the worker possesses marketable skills for suitable employment and there is reasonable expectation of employment at equivalent wages in the foreseeable future.
- *Retirement* – the worker is within 2 years of eligibility for Social Security retirement benefits or a private pension sponsored by an employer or labor organization.
- *Health* – the worker is unable to participate in training due to health problems.
- *Enrollment Unavailable* – if there are extenuating circumstances for the delay in enrollment as determined by the Secretary.
- *Training Unavailable* – Training approved by the Secretary is not reasonably available to the worker from either governmental or private sources; training is not suitable for the worker at a reasonable cost, or no training funds are available.

Waivers can be issued for not more than 6 months and can be revoked if the Secretary determines that the basis of the waiver is no longer applicable.

How long can workers receive Trade Readjustment Allowances?

Workers can receive up to 78 weeks of trade adjustment allowances. Workers enrolled in remedial education can receive an additional 26 weeks of trade readjustment allowances. Allowances can be paid for breaks in training up to 30 days. Workers receiving state funded extended benefits do not have to exhaust these benefits before receiving trade readjustment allowances.

How is training defined?

Training is defined to include:

- Any training program approved by the Secretary
- Employer based training including customized training
  - On-the-job training, which limits employer reimbursement of wages to 50%. Existing TAA worker protections related to displacement, as well as impairment of collective bargaining agreements apply.
  - Customized training, which is designed to meet the special requirements of an employer or group of employers; conducted with a commitment to hire the individual at the completion of training and for which the employer pays not less than 50% of the cost of training.
- Any training provided by the state pursuant to the Workforce Investment Act
- Any training program approved by a workforce investment board
- Any program of remedial education
- Any training program for which all of the costs of training are paid under any other federal or state program or any other source. Training is not to be approved if the training program requires the worker to reimburse the program using TAA funds.

How are TAA programs to be coordinated with the Workforce Investment Act?

The Secretary is to make every effort to secure counseling, testing, placement and supportive services for affected workers including services provided through WIA one-stop delivery systems.

What are the provisions for job search and relocation allowances?

Workers seeking jobs can receive job search allowances of not more than $1,250. Workers seeking to relocate can receive relocation allowances of not more than$1,250.

What is the annual authorization for TAA training?

TAA training programs are authorized at an annual level of $220 million. Funds may be expended in the fiscal year in which they are authorized and the succeeding two fiscal years.

What is the effective date of these provisions?

November 6, 2002

Summary # 2
Alternative Trade Adjustment Assistance Program for Older Workers

What are the eligibility criteria?

The Secretary shall provide the opportunity for a group of workers on whose behalf a petition is filed to request that the group of workers be certified for the alternative trade adjustment assistance program. The Secretary has 40 days to make the determination and is to use the following criteria:

- Whether a significant number of workers are age 50 or older
- Whether the workers in the firm possess skills that are not easily transferable
- The competitive conditions within the workers' industry.

If the worker is in a group that has been certified for the "alternative trade adjustment assistance program" the worker may elect to receive wage insurance benefits if:

- Obtains reemployment no more than 26 weeks after the date of separation
- Is at least 50 years of age
- Is employed on a full time basis as defined by state law
- Does not return to the employment from which the worker was separated

What are the benefits of this alternative program?

The worker is eligible to receive 50% of the difference between the wages received from reemployment and the wages received at the time of separation. Total payments cannot exceed $10,000 during the two-year eligibility period. The worker can also receive a tax credit for health insurance costs, but cannot receive any other benefits of the TAA program.

What is the authorization and effective date of this alternative program?

There is no specified authorization level. The effective date is August 6, 2003 (one year after enactment.) States can operate the demonstration program for up to five years.

Summary # 3
Credit for Health Insurance Costs of Eligible Individuals

What are the general parameters of this provision?

Taxpayers who are eligible individuals will receive a refundable tax credit for 65% of their expenses for "qualified health insurance" for the taxpayer and qualifying family members for each eligible covered month. Qualifying family members generally include the eligible individual's spouse and any dependents.

Who is an eligible individual?

Eligibility is determined on a monthly basis. The taxpayer must meet the following:

1. Is an eligible individual defined as:
    - *An eligible TAA recipient* - the individual is receiving a trade adjustment allowance or who would be eligible to receive such an allowance but for the requirement that the individual exhaust UI benefits before being eligible to receive an allowance
    - *An eligible alternative TAA recipient* – the individual is participating in and receiving benefits through the alternative TAA program for older workers.
    - *An eligible Pension Benefit Guaranty Corporation (PBGC) recipient*– a benefit recipient who is age 55 older and is receiving a benefit, which is paid by the PBGC.
2. Is covered by a "qualified health insurance."
3. Does not have other "specified coverage."
4. Is not imprisoned under federal, state or local authority.
5. For state-based coverage the individual has to have an aggregate period of creditable coverage for three months or more on the date in which the individual seeks to enroll

What is "qualified health insurance"?

Qualified health insurance is defined as follows:

1. Coverage under COBRA continuation provision
2. State-based continuation coverage under a state law
3. Coverage through a qualified state high risk pool
4. Coverage under a state employees health insurance plan, or a comparable program
5. Coverage arranged by the state and a group health plan, an issuer of health insurance coverage, an administrator or an employer
6. Coverage offered with a private sector health care purchasing pool
7. Coverage under a state operated health plan with no federal financial participation
8. Coverage through a spousal plan
9. Coverage under individual health insurance during the entire 30-day period that ends on the date the individual became separated from employment which qualified the individual for the TAA allowance, the benefit for an eligible alternative TAA recipient or a pension benefit from the PBGC whichever applies.

What are the conditions related to "qualified health insurance?"

Qualified health insurance does not include any state-based coverage (i.e. # 2-8) unless the state has elected to have such coverage treated as "qualified health insurance." The state must elect to have coverage (except COBRA) treated as "qualified health insurance" and it meets the following requirements:

- Each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides an eligibility certificate and pays the remainder of the premium

- No pre-existing condition limitations are imposed
- The total premium may not be greater than the total premium for a similarly situated individual and benefits must be the same of substantially similar for those who are not qualified
- Flexible spending plans are not included if substantially of the its coverage is of excepted benefits.

A qualifying individual is an eligible individual who seeks to enroll in state-based coverage, who has aggregate periods of creditable coverage of three months or longer, does not have specified coverage and who is not imprisoned.

What is "specified coverage"?

Specified coverage is the following:

1. Coverage under any insurance, which constitutes medical care (except for insurance that only covers excepted benefits) if at least 50% of the cost of the coverage is paid for by the employer (or former employer) of the individual or his/her spouse.
2. Coverage under certain governmental health programs i.e. Medicare, Medicaid, SCHIP, Federal Employees Health Benefit plan, military health plan.

What are "excepted benefits"?

Excepted benefits include the following:

1. Coverage only for accident or disability income
2. Supplemental liability insurance
3. Liability insurance including general liability and automobile liability insurance
4. Worker's compensation or similar insurance
5. Automobile medical payment insurance
6. Credit-only insurance
7. Coverage for on-site medical clinics
8. Other insurance coverage similar to # 1 – 7 under which benefits for medical care are secondary or incidental to other insurance benefits
9. Limited scope vision or dental benefits
10. Benefits for long-term care, nursing home care, home health care, community-based care or any combination
11. Other benefits similar to # 9 – 10
12. Coverage only for a specified disease
13. Hospital indemnity or other fixed indemnity insurance
14. Medicare supplemental insurance

Who writes the regulations?

The Secretary of the Treasury is authorized to prescribe regulations and other guidance to carry out the provisions of the tax credit program.

What are the provisions related to advance payments of the health insurance credit?

The Secretary of the Treasury is to establish a program for making payments of the tax credit on an advance basis on behalf of certified individuals to providers of qualified health insurance. These payments cannot exceed 65% of the amount paid by the taxpayer for coverage under qualified health insurance plan.

What is a "qualified health insurance costs credit eligibility certificate"?

In order to receive the tax credit on an advance basis eligible individuals must receive a "qualified health insurance costs credit eligibility certificate." This is a written statement that an individual is eligible for the credit, provides such information as required by the Secretary of the Treasury and is provided to the individual by the Secretary of Labor of the PBGC as appropriate or such other person or entity as designated by the Secretary.

What are the information disclosure requirements?

The Secretary may disclose return information to providers of health insurance only to the extent necessary to carry out the advance payment mechanism.

What information is required of the eligible taxpayer?

Any person who receives payments during a calendar year for qualified health insurance and claims a reimbursement for an advance credit amount is to file an "information return." The "information return" is to be in a form as the Secretary of the Treasury may require and is to contain the name, address and Taxpayer Information Number of each individual; the number of months for which the individual was entitled to receive advance payment for health insurance and information on advance credit amounts. The Secretary may prescribe other information.

What is the effective date?

A program to pay the credit on an advance basis (i.e. prior to the filing of the taxpayer's return) is to be established by the Secretary of the Treasury by August 1, 2003. The provision is generally to be effective with respect to taxable years beginning after December 31, 2001. The provision relating to the advance payment mechanism to be developed by the Secretary of the Treasury is effective on the date of enactment (August 6, 2002).

What is the new program to help the states promote high-risk insurance pools?

Under an amendment to the Public Health Service Act, the Secretary of the Department of Health and Human Services can provide grants to the states to set up high-risk insurance pools or match funds for states that already have high-risk insurance pools.

States that do not currently have high-risk insurance pools can receive up gets up to $1 million for the creation and initial operation of high-risk insurance pools. For FY 2003 $20 million is "authorized and appropriated."

States having qualified high-risk insurance pools can receive matching funds if these pools do the following:

- Restrict premiums to no more than 150% of the premium for applicable standard risk rates
- Offer a choice of two or more coverage options
- Have a mechanism to ensure continued funding of losses incurred by the state after FY 2004

For FY 2003 and FY 2004 $40 million is authorized and appropriated.

Generally the provisions of this section are effective December 31, 2001. The provisions related to state matching funds are effective August 6, 2002.

<u>Summary #4</u>
<u>Health Insurance Program Under the Workforce Investment Act</u>

What are the parameters of this new program?

A new health insurance coverage program is added to the National Emergency Grant (NEG) program under the Workforce Investment Act (WIA).

Who is eligible to apply for these new WIA National Emergency Grant funds?

The Secretary of Labor may award grants to a state or other eligible entity i.e. local workforce board, entities determined eligible by the Governor, other entities that demonstrate capability to effectively respond to the circumstances, such as a labor organization.

Who is eligible for assistance in this new program?

Individuals who are covered under an individual health insurance plan during the 30-day period before the date of separation from employment, which qualified the individual to become:

- *An eligible TAA recipient* - the individual is receiving a trade adjustment allowance or who would be eligible to receive such an allowance but for the requirement that the individual exhaust UI benefits before being eligible to receive an allowance
- *An eligible alternative TAA recipient* – the individual is participating in and receiving benefits through the alternative TAA program for older workers.
- *An eligible Pension Benefit Guaranty Corporation (PBGC*) *recipient*– a benefit recipient who is age 55 older and is receiving a benefit, which is paid by the PBGC.

Qualifying family members are also covered. This includes the eligible individual's spouse and any dependents.

What can these new WIA National Emergency Grant funds be used for?

These new NEG funds can be used for the following purposes:

1. <u>Health insurance coverage assistance for eligible individuals.</u>
   This includes:
   - Assistance to an eligible individual and their family members in enrolling in "qualified health insurance" (for a definition of qualified health insurance see Summary #2).
   - Administrative and start-up expenses related to the enrollment of eligible individuals and family members in qualified health insurance such as eligibility verification; notification; processing qualified health insurance costs credit eligibility certificates; assistance in enrolling in qualified health insurance; development/installation of necessary data management systems and other expenses determined appropriate by the Secretary.
2. <u>Interim Health Insurance Coverage and Other Assistance</u>
   The state or other entity may use these new WIA NEG funds to:
   - Provide assistance and support services to eligible individuals, including health care coverage, transportation, childcare, dependent care and income assistance. Income assistance shall supplement, not supplant, UI benefits and TAA allowances.
   - Provide assistance to eligible individuals and their qualifying family members in obtaining coverage in qualified health insurance. Such assistance shall supplement, not supplant any other state or local funds used to provide health care coverage and may not be included in determining the amount of non-federal contributions required under any program.

What are the requirements for NEG grant submission?

The Secretary is to approve/disapprove the grant application within 15 days and provide technical assistance to applicants who are rejected. The Secretary is to ensure that funds made available are available throughout the period.

What funds are available?

There is a general understanding that funding for this new program has been made mandatory and that funds have already been appropriated for FY 2002. This includes:

- $10 million for health insurance coverage which includes enrollment, start-up and administration
- $50 million for interim health coverage

For FY 2003 the following amounts have been authorized:

- $60 million for health insurance coverage which includes enrollment, start-up and administration
- $100 million for FY 2003 for interim health coverage

For FY 2004 the following amounts have been authorized:

- $50 million for interim health coverage

What is the effective date?

This program appears to be effective upon enactment (August 6, 2002). Additionally workers who were eligible for the previous Trade Adjustment Assistance program as of April 1, 2002 and are receiving trade readjustment allowances are also eligible for assistance under this program.

Designated Beneficiary Countries under Current Trade Agreements/Trade Preference Programs

ANDEAN TRADE PREFERENCES ACT (ATPA)
Beneficiary Countries: Bolivia, Colombia, Ecuador, Peru

CARIBBEAN BASIN ECONOMIC RECOVERY ACT (CBERA)
Beneficiary Countries: Antigua Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, Saint Kitts-Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago

Other Countries Covered by the Act, but not Currently Eligible for Benefits: Anguilla, the Cayman Islands, Jamaica, Suriname, Turks and Caicos Islands

AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA)
Beneficiary Countries: Benin, Botswana, Cameroon, Cape Verde, Central African Republic, Chad, Congo (ROC), Cote d'Ivoire, Djibouti, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia

Other Countries Covered by the Act, but not Currently Eligible for Benefits: Angola, Burkina Faso, Burundi, Comoros, Democratic Republic of Congo, Equatorial Guinea, Gambia, Liberia, Somalia, Sudan, Togo, Zimbabwe

COUNTRIES WITH FREE TRADE AGREEMENTS WITH THE U.S.
Currently: Canada, Israel, Jordan, Mexico

Now Under Negotiation: Chile, Singapore

Negotiations to Begin Soon: Costa Rica, El Salvador, Guatemala, Honduras, Morocco, Nicaragua