

Understanding Changes in the Trade Adjustment Assistance Extension Act of 2011 and the Election Option for Some Certified Workers

Congress recently expanded the Trade Adjustment Assistance (TAA) program¹ and reauthorized TAA for another two years.² The 2011 Trade Adjustment Assistance Extension Act (TAAEA) restores many, but not all, benefits and services provided under the 2009 TAA Amendments, creating a new 2011 TAA program. The overall impact of Congressional action created three parallel TAA programs that will operate simultaneously over the next few years. These programs are the 2002 program created by Congress in that year, the 2009 program passed as part of the Recovery Act, and the 2011 program created by TAAEA.

Since there have been a number of changes to TAA in recent years, this fact sheet explains some of the effects of 2011 Amendments on certified workers and a one-time election option to choose between the 2002 and 2011 TAA programs for some workers under TAAEA.

After the expiration of the 2009 program in February 2011 and before passage of the 2011 amendments in October (referred to as the “gap” period), workers were certified and received TAA benefits under the 2002 law. These “gap” workers are now granted a one-time election option. They may choose whether they want to have their individual cases handled under the 2002 law or the 2011 law. The table below describes the four potential groups of TAA-certified workers, corresponding petition numbers, and dates involved with each group.

TAA Law	Petition Number	Applicable Date	Election Option
2002 Amendments	Below TA-W-70,000	Before May 18, 2009	NO
2009 Recovery Act	TA-W-70,000 to TA-W-79,999	May 18, 2009 to Feb. 14, 2011	NO
2002 “Gap” Program	TA-W-80,000 to TA-W-80,999	Feb. 14, 2011 to Oct. 21, 2011	YES
2011 Amendments	TA-W-81,000	After Oct. 21, 2011	NO

Most TAA certified workers are unaffected by election option in 2011 Amendments

As shown in the table, most workers are unaffected by the election option. The Department of Labor has categorized adversely affected workers based on their certification number to help workers, unions, workforce agencies, and others understand which benefits are available for the groups of workers currently certified for TAA.³ As shown in our table, there are essentially three groups of workers unaffected by the 2011 changes:

- Workers covered under a petition filed *before May 18, 2009* have benefits available under the 2002 Act and a TAA petition certification number below TA-W-70,000
- Workers certified under the 2009 Amendments (*from May 18, 2009 until Feb. 14, 2011*) with certifications numbered between TA-W-70,000 and TA-W-79,999
- Workers certified under a petition *filed after Oct. 21, 2011*, with a certification number TA-W-81,000 or higher have benefits available under the 2011 Amendments

Only the workers certified in the “gap” are affected by the election option

Workers certified between February 14, 2011 and October 21, 2011 have a certification number between TA-W-80,000 and TA-W-80,999 and are potentially impacted by the election option under the 2011 amendments. The impact occurs at the individual level. Election eligibility is based on when the individual worker received TAA benefits.⁴ Those “gap” workers receiving TAA benefits prior to December 20, 2011, will receive a notice from their state agency advising them that they will continue under 2002 TAA unless they chose to participate in 2011 TAA. Those “gap” workers who did not receive any TAA benefits prior to December 20, 2011, will participate under the 2011 TAA program once they apply for TAA and will NOT have an election.

Only “gap” workers currently receiving TAA benefits have a choice

If a “gap” worker is currently receiving TAA benefits under one of these petitions (TA-W-80,000 – TA-W-80,999),⁵ those benefits are pursuant to the 2002 Act. These workers will get an election notice giving them a one-time election between December 20, 2011 and March 19, 2012, to choose between the 2002 Act benefits and 2011 Act benefits. **If workers do not elect to change to the 2011 Act benefits, they will continue receiving TAA benefits under the 2002 Act.**

The timeframe to make a choice is from December 20, 2011 through March 19, 2012. The state must notify each certified worker of his or her eligibility for 2011 Act benefits and must assist workers in exercising their choice.⁶

Important considerations for “gap” workers making an election

Here are some important considerations for workers who must choose to transition from 2002 Act benefits to 2011 Act benefits:

First, the number of weeks of TRA (cash entitlement) previously received by the worker will be subtracted when computing the maximum benefits for which a worker is eligible,⁷ so there is

no net gain of benefit weeks by choosing the 2011 Act. In fact, under the 2011 Act, there may be a reduction in TRA payments if the timing of training and weekly benefits is not carefully considered. At first glance, it would seem that workers are eligible for more Additional TRA because the 2011 Act provides a maximum of 65 weeks of Additional TRA payable over 78 weeks. But, in the 2011 Amendments, workers are only eligible for the potential maximum of 130 weeks, if the last 13 weeks are needed to complete training and the worker has met predetermined training benchmarks.⁸

On the other hand, under the 2002 Act, workers are eligible for a maximum of 52 weeks of Additional TRA, but if they require remedial education, they are eligible for 26 weeks of Remedial TRA. So, conceivably, a worker may receive more weeks of TRA payments under the 2002 Act, if their training requires remedial education. Please see the chart below for further explanation.

Weeks of Unemployment Insurance Benefits Vary by Trade Adjustment Assistance Act

	Trade Adjustment Assistance Act		
	2002	2009	2011
Regular State Benefits	26	26	26
Basic Trade Readjustment Allowance (TRA)	26	26	26
Additional Trade Readjustment Allowance (TRA)	52	78	65
Remedial Trade Readjustment Allowance (TRA)	26	26	---
Completion Trade Readjustment Allowance (TRA)	---	---	13
Maximum Number of Weeks	130	156	130

Note: Trade Adjustment Assistance participants must exhaust regular federal and state unemployment insurance benefits before starting TRA. The weeks of regular federal and state unemployment insurance benefits count toward the maximum number of weeks available. For example, in recent years, unemployed workers may have qualified for up to 99 weeks of federal and state unemployment benefits. Under the 2011 Act, a worker who received 99 weeks of regular benefits would, at most, be eligible for 31 weeks of TRA for a total of 130 weeks.

[1] Regular State Benefits: Most states offer 26 weeks of regular state benefits.

[2] Basic TRA: Income support available to all TAA-certified workers, even workers on a training waiver. However, the 2011 Amendments reduce reasons for a waiver.

[3] Additional TRA: Income support available to workers in approved training.

[4] Remedial TRA: Income support for workers in training who requires remedial training.

[5] Completion TRA: Income support for workers in active training and meeting performance benchmarks.

The second significant difference, and one that will probably most directly impact workers who are contemplating a choice between the 2002 Act and 2011 Act, is the new, more narrow reasons for issuing a training waiver.⁹ Under the 2011 Act, a training waiver cannot be issued for recall, retirement or marketable skills. If a worker was granted a waiver based on one of those reasons, and the worker elects to receive benefits under the 2011 Act, her previous

waiver will be revoked and she will be required to enroll in training by 26 weeks from the date of separation or 26 weeks from the date of certification, whichever is later, but in no case later than 30 days after the revocation (See TEGl 22-08). In essence, workers who were certified or laid off after June 20, 2011 and issued a waiver for the three excluded reasons (likely recall, impending retirement, or marketable skills) need to seriously consider remaining on 2002 TAA by not making an election or electing 2002 TAA.

One of the most difficult aspects to 2002 TAA is the so called “8/16 week rule.” This requires enrollment in training or a waiver of training by the 8th week after TAA certification OR the 16th week after the worker’s most recent total separation from affected employment. This is a hard and fast deadline and failure to comply with it often meant a loss of TAA benefits under 2002 TAA. Under the 2011 Act, this rule is now the 26/26 week rule. This extension of time will be beneficial for workers who have passed the 2002 Act enrollment deadline.

An important consideration for workers 50 years or older is the difference between Alternative Trade Adjustment Assistance and Reemployment Trade Adjustment Assistance. The primary difference between ATAA, offered under the 2002 Act, and RTAA, offered under the 2011 Act, is the fact that under the 2002 Act, if a worker chooses ATAA, no other TAA benefits (except HCTC) are available. By comparison, under the 2011 Act a worker can choose RTAA and still attend training.

One final difference between the 2002 Act and the 2011 Act is that a job search allowance and relocation allowances are no longer an entitlement under 2011 TAA.¹⁰ Rather, they are granted by the state on a discretionary basis. For states, this means that the job search allowances and relocation allowances now come from the same money as training and other training and employment services, including case management. For workers, this means that job search allowances and relocation allowances are now more competitive and granted on a case-by-case basis.

If a “gap” worker seeks benefits after December 20, 2011, they automatically receive 2011 TAA benefits

Workers (TA-W 80,000 – TA-W 80,999) who seek benefits for the first time after Dec. 20, 2011 will automatically receive 2011 Amendment benefits. This is also true for workers who just received initial case management and employment services OR received the Health Coverage Tax Credit (HCTC) prior to December 20; those workers will automatically receive benefits under the 2011 Amendments.

States must advise workers

Again, states are supposed to notify impacted workers of their one-time election and document their choice in their file.¹¹ They must provide workers with information on the benefits available under each program and discuss the pros and cons of each option as it applies to each individual worker. As always, workers should carefully weigh their options and work cooperatively with their local one-stop.

ENDNOTES

¹ Trade Act of 1974, enacted by the Trade Adjustment Assistance Extension Act of 2011

² Until Dec. 31, 2013; Sec. 233 of TAAEA

³ TEGL 10-11 A.1

⁴ TEGL 10-11 A.2.3

⁵ TEGL 10-11 A.2.4.1 TAA benefits is defined as a training waiver, training, job search and relocation allowances, TRA and ATAA

⁶ TEGL 10-11 A.2.4.1

⁷ TEGL 10-11 A.2.4.2

⁸ TEGL 10-11 C.1

⁹ TEGL 10-11 C.5

¹⁰ TEGL 10-11 E. and F.

¹¹ TEGL 10-11 A.2.4.1