

DETAILED DESCRIPTION OF THE
TRADE ADJUSTMENT ASSISTANCE IMPROVEMENT ACT

1. EXPANDS COVERAGE FOR WORKERS

The Trade Adjustment Assistance Improvement Act (TAAIA) contains key amendments to expand worker coverage under the Trade Adjustment Assistance (TAA) program.

First, the bill amends the existing TAA for Workers program to include service sector workers. (The TAA program was created in 1962, to assist workers dislocated due to government policies in eliminating tariffs and other barriers to global trade. Under current law, however, the program extends coverage only to workers in the manufacturing and agricultural sectors.) The TAAIA would extend coverage to three categories of service sector workers who lose their jobs because of trade:

- ▶ **Workers who lose their job because of increased imports of like or directly competitive services (“increased imports coverage”).** For example, Firm A, located in the United States, supplies software engineering services to Company B, also located in the United States. Company B ceases to obtain services from Firm A, and instead purchases services from Corporation C, located in China. Firm A lays off a significant number of workers, or closes. Workers laid off from Firm A would be eligible for TAA benefits.
- ▶ **Workers who lose their job because of production relocation (“offshoring coverage”).** For example, Firm A, a computer manufacturer in the United States, moves its U.S.-based design department to India, laying off all or a significant number of its U.S.-based staff. U.S.-based workers in Firm A’s design department would be eligible for TAA benefits.
- ▶ **Workers who lose their job because of contract production relocation (“offshore outsourcing coverage”).** For example, Airline A, an air carrier in the United States, closes its U.S.-based maintenance department. Airline A contracts with Company B, an independent aircraft maintenance company in China, for all major maintenance services. U.S.-based workers in Airline A’s maintenance department would be eligible for TAA benefits.

By broadening coverage, service sector workers – including local, state, and federal employees – will be eligible for all TAA benefits, including:

- up to 104 weeks of unemployment compensation benefits for workers engaged in job training;
- up to 104 weeks of job training;
- a refundable (and advanceable) tax credit for 80% of certain health insurance premiums;
- up to \$1250 in job search allowances for workers who must search for work outside their commuting area;
- up to \$1250 in relocation allowances; and
- limited wage insurance for older workers as an alternative to job training.

Second, the TAAIA simplifies the TAA application process by authorizing the Secretary of Labor to certify groups of workers as eligible for TAA on an industry- or occupation-wide basis, rather than on a plant-by-plant basis. The current plant-by-plant certification process is inefficient, requiring the Department of Labor to investigate multiple facilities within the same communities affected by trade, and can lead to delayed and inconsistent results – with some workers who lose their jobs getting the TAA benefits they deserve, while others down the street do not. The duplicative investigations and inconsistent results are of particular concern in cases where the U.S. International Trade Commission (ITC) or another federal agency already has made a formal determination that the industry at issue is suffering injury due to import competition.

The TAAIA would address this problem by eliminating the need for the Secretary of Labor to reinvestigate for TAA eligibility purposes whether a group of workers has been injured by increased imports in cases where the link between imports and injury to a specific industry already has been established by another federal agency. The legislation would require the Department of Labor to certify as eligible for TAA all workers within a domestic industry that is subject to a trade remedy under U.S. antidumping, countervailing duty, or safeguard laws. For example, if the U.S. International Trade Commission (ITC) makes a final determination that dumped imports of steel are materially injuring the domestic steel industry, the TAAIA would require the Secretary of Labor to certify as eligible for TAA workers in the steel industry who are laid off within one year before or after the ITC's determination.

The bill also would require the Secretary of Labor to initiate an investigation to determine whether to certify workers on an industry-wide or occupation-wide basis when either: (1) she certifies three or more petitions from firms in the same industry or occupation within a 6-month period; or (2) such an investigation is requested by either President, U.S. Trade Representative, House Ways and Means Committee or Senate Finance Committee.

Third, the bill expands existing TAA coverage for manufacturing workers by eliminating unnecessary and burdensome eligibility requirements. Offshoring coverage is extremely limited under existing law. Specifically, under current law, offshoring coverage extends automatically only to workers whose firms have moved to a country with which the United States has a free trade agreement (e.g., Israel, Mexico, Canada, Chile, Singapore) or a region-specific preferential trade program (e.g., the Andean and Caribbean Basin regions or sub-Saharan Africa). All other workers must show both production relocation and an increase or a likely increase in imports. The additional "increased imports" requirement can impose a significant barrier to workers' qualifying for TAA benefits, especially in instances where the relocation of a U.S. company offshore does not result in an increase in imports. (For example, if a U.S. tire company that produces primarily for export relocates to Brazil, it is unlikely that this form of offshoring will be manifested in an increase in tire imports to the United States.) The bill eliminates this unnecessary and arbitrary requirement.

Fourth, the bill eases the evidentiary requirements for establishing eligibility for workers in service and manufacturing sectors. In particular, the bill allows the Secretary of Labor to determine that increased imports exist, or that offshore outsourcing has occurred, based

on certifications by affected firms or their customers. These changes are necessary because of inadequate service import data collection and the difficulty in determining whether offshoring or offshore outsourcing has occurred.

The TAAIA also directs the Secretary of Labor to contact firms, unions, employees and other appropriate persons in order to confirm information furnished on TAA petitions submitted to the Department, and to elicit information that might be relevant to such petitions. This provision is intended to address the failure of the Department of Labor to fully investigate petitions submitted on behalf of workers, which has been criticized repeatedly by the U.S. Court of International Trade.

Fifth, the bill ensures that deadlines for workers to enroll in TAA are suspended during any period in which the worker is appealing the denial of his petition for TAA assistance. In several cases, workers have had to go to court to force the Department of Labor to certify them for TAA benefits to which they are entitled under the law. Some of these cases have taken so long to resolve that the two-year period of benefits authorized under the TAA statute ran out before the workers were certified. (By law, TAA benefits are available to certified workers for 2 years following their date of separation from employment.) The TAAIA would ensure that workers who successfully challenge the denial of their petition for TAA will be eligible for full benefits beginning on the date of certification rather than the date of layoff.

2. EXPANDS COVERAGE FOR FIRMS

The TAAIA expands the TAA for Firms program to cover services firms and doubles funding for the program from \$16 million to \$32 million to cover the cost of providing benefits to services firms, as well as manufacturing and agricultural firms.

The TAA for Firms program provides technical and financial assistance to manufacturing firms adversely affected by import competition. Firms certified under the program, which is administered by the Department of Commerce, may receive technical or financial assistance in developing and implementing proposals to improve a firm's competitiveness. In addition, the Secretary of Commerce may provide grants to establish industry-wide programs for product or process development, export development, or other initiatives. The Secretary may also provide direct loans to eligible firms.

3. INCREASES FUNDING FOR TRAINING AND CLARIFIES TRAINING COVERAGE

The TAA program currently provides up to 104 weeks of job training to claimants who remain unemployed after exhausting regular unemployment benefits. The TAAIA addresses the two key problems with the existing operation of the job training program.

First, the TAAIA triples the current training funding cap from \$220 million to \$660 million by 2012, in order to address current funding shortages and to cover the additional cost of providing training to service workers.

According to a 2004 report by the GAO, nineteen states were forced to temporarily discontinue enrolling workers in training between 2001 to 2003, because of a lack of funds. Six

states had to take this step in 2004. In order to address this shortfall, the TAAIA immediately doubles the annual cap on training funding to \$440 million. The bill then gradually increases the funding cap to \$660 million by 2012, in order to cover the additional costs of providing training to service sector workers and recipients of industry-wide TAA benefits. The TAAIA also directs the GAO to study the adequacy of funding for TAA training and the effectiveness of the current mechanism for allocating training funds between states and among individuals.

Second, the TAAIA amends the existing TAA statute to allow explicit use of TAA training funds to pay for continued enrollment in a program at an accredited college or university for the purpose of obtaining a degree, where completion of the degree can be reasonably expected to result in employment. Currently, the statute covers a wide-range of training programs, including: employer-based training (e.g., on-the-job), any training program approved by a State pursuant to the Workforce Investment Act, programs of remedial education, and any other program approved by the Secretary of Labor. However, the statute does not explicitly cover use of training funds for non-remedial education, including completion of two- or four-year basic degrees or advanced degrees. Such tuition assistance is, at times, appropriate, particularly when it allows workers to continue or complete course work started when they were employed.

4. EXPANDS BASES FOR TRAINING WAIVERS

Under current law, a worker's eligibility for TAA income support (cash benefits) is conditioned on the worker being enrolled in or having just completed an approved training program. In certain cases, this training requirement can be waived. The existing statute provides six bases for a training waiver: (1) the worker has been or will be recalled by the firm; (2) the worker possesses marketable skills; (3) the worker is within two years of retirement; (4) the worker is unable to participate in training for health reasons; (5) training is not available within the certification period; or (6) training is not otherwise reasonably available to the worker.

Many services workers, such as engineers or accountants, already hold specialized or advanced degrees and further training is not necessary or appropriate. **In recognition of such situations, the TAAIA adds as an additional basis for granting a training waiver possession of an advanced degree or specialized certification in a particular field, where such degree or certification is in a field in which there is a reasonable expectation of re-employment.** The existing requirement that a worker continue to meet certain job search requirements remains.

5. MAKES PERMANENT AND SIMPLIFIES APPLICATION PROCESS FOR WAGE INSURANCE PROGRAM

The Trade Act of 2002 created a 5-year demonstration project that provides a wage insurance subsidy to older workers who find reemployment quickly but at a lower wage. Under the current program, a worker aged 50 or older is eligible to receive 50 percent of the difference between his pre- and post-layoff earnings up to a maximum of \$10,000 over 2 years, provided that the worker finds a new job within 26 weeks, forgoes training, and earns \$50,000 or less in his new job.

Participation in the wage insurance program has been low – only 1400 workers received wage insurance benefits between August 2003 and December 2004. One of the reasons for the low participation rate is that current law requires that applicants (e.g., a business, union, or group of workers) signify on their initial TAA petition whether they want their workers to be eligible for wage insurance. (It is the only aspect of TAA for which workers must identify their interest during the petition process.) Since most petitioners are not aware of the specific forms of assistance that may be available to displaced workers, this requirement is a significant obstacle to participation in the program.

The TAAIA would eliminate the unnecessarily burdensome requirement that applicants signify their interest in wage insurance on the initial application, and instead allow workers to apply for wage insurance after their application for TAA is accepted. The Act also would make the wage insurance program permanent.

6. IMPROVES OUTREACH AND TRANSPARENCY

Many workers who lose their jobs due to imports or shifts in production are not aware of the benefits that the TAA program provides. Current law requires the Secretary of Labor to perform certain outreach activities, including providing written notice about the TAA program to all workers who may be covered by a certification, and publishing information about TAA benefits in local newspapers in areas where workers covered by a certification reside. In addition, state agencies that administer the TAA program are required to advise each worker who applies for unemployment insurance about the TAA program and relevant deadlines. (States also are required to ensure that Rapid Response assistance and services available under other federal programs are made available to workers covered by a TAA petition.) However, anecdotal evidence suggests that the extent to which states and the federal government comply with these outreach requirements varies greatly.

The TAAIA directs the GAO to report to Congress on the extent to which states and the federal government are complying with the obligations regarding outreach under current law. In addition, the TAAIA establishes within the Department of Commerce an Office of the Trade Adjustment Assistance Advisor, which will be responsible for operating a telephone hotline that workers and employers may call with questions about TAA benefits, eligibility requirements and application procedures.

The TAAIA also promotes greater transparency by requiring the Secretary of Labor to provide notice on its public website (as well as in the Federal Register, as required by current law) when it makes a determination regarding the eligibility of groups of workers for TAA.

Finally, the TAAIA codifies existing practice under which the TAA program is administered by workers in state unemployment insurance agencies to ensure a continuation of the programmatic connection between TAA and the unemployment insurance program.

7. FIXES PROBLEMS WITH EXISTING TAA HEALTH CARE TAX CREDIT

The Health Coverage Tax Credit (HCTC), first established in 2002, assists TAA eligible workers or retirees who have lost their employer-sponsored health coverage. The HCTC currently pays 65% of “qualified” health care insurance premiums through a refundable tax credit that is available either at the end-of-the-year or on a real-time monthly “advanceable” basis. While many trade-displaced workers are eligible for the HCTC, few have been able to take advantage of this program because of certain conditions regarding receipt of the benefit, the time lag between receipt of the benefit and separation from employment, and the failure of some states to provide coverage options. The TAAIA fixes the problems with the existing TAA health care tax credit to help ensure that displaced workers and their families maintain comprehensive, affordable coverage. Specifically, the bill:

- ▶ **Increases the Premium Subsidy to 80%.** Current law provides only a 65% subsidy to offset the cost of health insurance premiums for TAA eligible workers. At this level, health insurance remains prohibitively expensive for displaced workers with limited incomes. Employers pay, on average, 75-80% toward the cost of family coverage. Increasing the premium subsidy to 80% will enable more families to be able to afford the cost of continuing coverage, and in addition will bring the TAA HCTC more closely in line with standard employer practice.
- ▶ **Covers 100% of the First Month Premium.** It currently takes the IRS about one month to set up the billing cycle for the advance payment option. Instead of requiring displaced workers to shoulder the entire cost of premiums in the first month, the TAAIA directs the IRS to pay 100% of the cost.
- ▶ **Establishes a National Fall-Back Plan.** Under current law, eligible individuals can only apply the health care tax credit toward the purchase of a “state qualified plan.” However, because states are not required to designate a qualified plan, TAA-eligible workers and retirees who reside in states without designated plans cannot obtain coverage. The TAAIA addresses this gap by allowing eligible individuals to purchase insurance through the plans available in the Federal Employees Health Benefits Program (FEHBP).
- ▶ **Initiates Presumptive Eligibility.** Displaced workers must complete multiple steps before they can enroll in a qualified health plan and receive the TAA HCTC. Once an individual has been certified as a trade-displaced worker, he must complete a separate application in order to receive cash benefits. If the individual is granted cash benefits, he may then apply for the HCTC. Under current practice this process can take 60 days or longer. Most newly displaced workers cannot afford to maintain health care insurance coverage during this period because of the high cost of insurance premiums. As a result, TAA-eligible workers can experience gaps in insurance coverage that are unnecessary and undesirable. Moreover, such gaps can cause TAA-eligible workers to lose the consumer protections (e.g., guaranteed issue and prohibition on pre-existing condition exclusions) that only apply if the individual maintains continuous coverage, subjecting them to medical

underwriting¹. (See points below.)

The TAAIA corrects this problem by creating a “presumptive status as a TAA recipient.” Under this provision, individuals may enroll in a qualified health care plan and receive the health care tax credit immediately upon application for certification from the Department of Labor. The period of presumptive eligibility ends at the shorter of 90 days or enrollment in an HCTC qualified insurance plan. This section also includes provisions to ensure against fraud. If an individual elects to participate in the presumptive eligibility program, the IRS will pay 100% of the cost for their first month of coverage while the billing cycle is set up.

- ▶ **Eliminates the Three-Month Continuous Coverage Requirement.** The TAA statute requires trade-displaced workers to have three months of continuous health insurance coverage in order to receive the protections guaranteed in the law (guaranteed issue, no pre-existing condition exclusions, and same benefits and premiums for similarly situated individuals). The Administration has incorrectly interpreted this provision to require three months of coverage immediately preceding enrollment in an HCTC-designated plan (instead of three months prior to separation from employment, as Congress intended). Because it can take months between separation from employment and final certification of TAA HCTC eligibility, the effect of this interpretation is that TAA eligibles must maintain unsubsidized coverage, or forego coverage during this period and face medical underwriting. This has been particularly devastating for the PBGC retirees, who represent more than half of the targeted population and who may have lost their employer coverage months or even years before passage of the TAA.

Legislative precedent for continuous coverage for workers is already established by COBRA, which only requires that the worker have coverage at the time of separation. Thus, imposing a three-month minimum requirement creates a unique standard for TAA-eligibles that no other worker has to meet. There is no justification for such unequal treatment. The TAAIA corrects this inequity by eliminating the three-month coverage requirement and instead using the precedent set by COBRA.

- ▶ **Clarifies 63-day Creditable Coverage Requirement.** Under current law, TAA-eligible workers may only qualify for the consumer protections (guaranteed issue, no pre-existing condition exclusions, and same benefits and premiums for similarly

¹Medical underwriting is the process an insurer uses to determine the likelihood of paying claims based on medical history of the applicant. Through the process of medical underwriting, an insurer may decide to: a) exclude certain benefits from the plan to avoid having to cover a pre-existing condition; b) charge higher out-of-pocket costs or premiums; or c) deny coverage altogether.

situated individuals) if they enroll in a qualified plan within 63 days of losing coverage. Because delays in the TAA certification and application approval process can take months, it is not unusual for an individual to experience a 63-day lapse, thus subjecting the TAA-eligible to medical underwriting. The TAAIA corrects this by clarifying that tolling toward the 63-day lapse in coverage shall not begin until five days after the postmark date of the notice by the Secretary that the individual is eligible to enroll in a qualified health plan.

- ▶ **Makes Individual Market Plans More Affordable.** Current law allows states to enter into arrangements with a various types of health plans, including individual market plans. However, unlike group plans, plans sold in the individual market use medical underwriting to evaluate the probability that an individual will use services and price premiums accordingly. This can cause wide disparities between the premiums charged to healthy versus sick individuals. While a few states have adequate consumer protections for products purchased in the individual market (e.g., New York), most states' individual markets are largely unregulated and make it difficult to purchase meaningful coverage. The TAAIA imposes community rating or 150% rate-band on individual plans that will equalize premiums across the HCTC population and keep coverage more affordable. It will also hold insurers accountable for keeping taxpayer costs down.

- ▶ **Eliminates Individual Market Option.** Under current law, health care tax credits may only be applied toward the cost of individual market plans if the TAA-eligible was enrolled in one of these plans 30-days prior to separation from employment. Unfortunately, this provision has caused great confusion among TAA-recipients who newly enrolled in individual market plans using their tax credit. Because they do not meet the 30-day requirement set in law, the IRS has retroactively collected amounts that were mistakenly paid toward individual market policies, sometimes in the thousands of dollars. This has caused considerable hardship for trade-displace workers. TAAIA remedies this confusing situation by eliminating the individual market option.

- **Protects Spouse and Dependent Coverage.** Under current law, spouses and dependents of TAA recipients lose their coverage once the TAA eligible individual is enrolled in the Medicare program, or in cases of death or divorce. Again using COBRA as the precedent, the TAAIA would allow spouses and their dependent children to retain eligibility for the HCTC for 36 months in the event one of these situations occurs.

- ▶ **Directs the Department of the Treasury to Make Recommendations On How to Increase Participation.** Currently, only three percent of eligible individuals are participating in the health care tax credit program. The TAAIA asks the Department of the Treasury to make recommendations on how to increase take up, including whether to increase the subsidy to make premiums more affordable.

8. **IMPROVES COLLECTION AND ANALYSIS OF INFORMATION ON TAA PARTICIPATION AND SERVICE SECTOR JOB TRENDS**

Currently, there is little information publicly available regarding TAA participation and the impact of the program. **The TAAIA addresses this lack of data by requiring the Department of Labor to collect and publish detailed data regarding the number of workers applying for and participating in the TAA program, the benefits they receive, and their reemployment and wage replacement rates after they stop receiving benefits under the program.** In addition, the bill requires the Secretary of Labor to report to Congress on whether, in light of data collected on TAA use, changes should be made to the program.

There also are relatively few data and little analysis on services imports into the United States, even though service sector jobs account for over 80 percent of employment in the United States. **The TAAIA addresses this information gap by directing the Departments of Commerce and Labor to track and make public data on both service sector and manufacturing jobs trends, including data on offshoring, and offshore outsourcing.**

9. **EXTENDS AUTHORIZATION FOR TAA PROGRAMS**

The current TAA programs for workers, firms and farmers expires on September 30, 2007. The TAAIA would extend authorization for the programs until September 30, 2012.