

## F. Trade Related Provisions

### 1. TRADE ADJUSTMENT ASSISTANCE<sup>226</sup>

#### I. OVERVIEW

The conference report amends the Trade Act of 1974 (“the Trade Act”) to reauthorize trade adjustment assistance (“TAA”), to extend trade adjustment assistance to service workers, communities, firms, and farmers, and for other purposes.

#### II. HOUSE BILL

No provision

#### III. SENATE BILL

First, the Senate bill amends section 245(a) of the Trade Act of 1974 to extend the authorization for the TAA for Workers program until December 31, 2010. Second, the proposal amends section 246(b)(1) of the Trade Act of 1974 to extend the authorization for Alternative Trade Adjustment Assistance program by two years. Third, the proposal amends section 256(b) of the Trade Act of 1974 to extend the authorization for the TAA for Firms program until December 31, 2010. Fourth, the proposal amends section 298(a) of the Trade Act of 1974 to extend the TAA for Farmers program until December 31, 2010. Fifth, the proposal amends section 285 of the Trade Act of 1974 to extend the overall termination date of the TAA programs until December 31, 2010. Sixth, the proposal provides that these amendments shall have an effective date of January 1, 2008. Seventh, the proposal includes a Sense of the Senate that a TAA for Communities program should be revived.

#### IV. CONFERENCE REPORT

##### A. Part I - Trade Adjustment Assistance for Workers

##### 1. Subpart A – Trade Adjustment Assistance for Service Sector Workers

*Extension of Trade Adjustment Assistance to Service Sector and Public Agency Workers; Shifts in Production (Section 1701 (amending Sections 221, 222, 231, 244, and 247 of the Trade Act of 1974))*

##### Present Law

Section 222 of the Trade Act provides trade adjustment assistance to workers in a firm or an appropriate subdivision of a firm if (1) a significant number or proportion of the workers in the

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<sup>226</sup> Descriptions prepared by the majority staffs of the House Committee on Ways and Means and the Senate Committee on Finance.

The provision also expands the "shift in production" prong of present law by eliminating the requirement in section 222 that the shift be to a trade agreement partner of the United States or a country that benefits from a unilateral preference program. Under the modified provision, if workers are separated because their firm shifts production from a domestic facility to any foreign country, the separated workers would potentially be eligible for TAA. Additionally, there would be no requirement to demonstrate separately that the shift was accompanied by an increase of imports of products like or directly competitive with those produced by the workers' firm or subdivision.

The provision also amends section 222 to make workers at public agencies eligible for TAA. Under the modified provision, if a public agency acquires services from a foreign country that are like or directly competitive with the services that the public agency supplies, and if the acquisition contributed importantly to the workers' separation or threat thereof, the workers would be able to seek TAA benefits.

The provision also amends section 222 to expand the universe of adversely affected secondary workers that could be eligible for TAA. First, the provision adds firms that supply testing, packaging, maintenance, and transportation services to the list of downstream producers whose workers potentially are eligible for TAA. Second, workers at firms that supply services used in the production of articles or in the supply of services would also become potentially eligible for benefits. Third, the provision permits downstream producers to be eligible for TAA if the primary firm's certification is linked to trade with any country, not just Canada or Mexico. The provision requires the Secretary to obtain information that the Secretary determines necessary to make certifications from workers' firms or customers of workers' firms through questionnaires and in such other manner as the Secretary considers appropriate. The provision also permits the Secretary to seek additional information from other sources, including (1) officials or employees of the workers' firm; (2) officials of customers of the firm; (3) officials of unions or other duly recognized representatives of the petitioning workers; and (4) one-stop operators. The provision states that the Secretary shall require a firm or customer to certify all information obtained through questionnaires, as well as other information that the Secretary relies upon in making a determination under section 223, unless the Secretary has a reasonable basis for determining that the information is accurate and complete.

The provision states that the Secretary shall require a worker's firm or a customer of a worker's firm to provide information by subpoena if the firm or customer fails to provide the information within 20 days after the date of the Secretary's request, unless the firm or customer demonstrates to the Secretary's satisfaction that the firm or customer will provide the information in a reasonable period of time. The Secretary retains the discretion to issue a subpoena sooner than 20 days if necessary. The provision also establishes standards for the protection of confidential business information submitted in response to a request made by the Secretary.

The provision amends the penalties provision in section 244 of the Trade Act to cover persons, including persons who are employed by firms and customers, who provide information during an investigation of a worker's petition.

Finally, the provision amends section 247 of the Trade Act to add definitions for certain key terms and makes various conforming changes to sections 221 and 222.

### **Reasons for Change**

Most service sector workers presently are ineligible for TAA benefits because of a statutory requirement that the workers must have been employed by a firm that produces an “article.” Of the 800 TAA petitions denied in FY2006, almost half were denied for this reason. Most of the denied service-related petitions came from two service industries: business services (primarily computer-related) and airport-related services (*e.g.*, aircraft maintenance). In April 2006, the Department of Labor issued a regulation expanding TAA eligibility to software workers that partially, but not fully, addresses the service worker coverage issue. *See* GAO Report 07-702. The provision fully addresses the issue by making service sector workers eligible for TAA on equivalent terms to workers at firms that produce articles.

The provision expands the “shift in production” prong of present law for similar reasons. Under present law, a worker whose firm relocates to China is not necessarily eligible for TAA; such worker must also show that the relocation to China will result in increased imports into the United States. In contrast, a worker whose firm relocates to a country with which the United States has a trade agreement (*e.g.*, Mexico, Israel, Chile) does not need to show increased imports. The provision eliminates this disparate treatment by making TAA benefits available in both scenarios on the same terms.

Present law also fails to cover foreign contracting scenarios, where a company closes a domestic operation and contracts with a company in a foreign country for the goods or services that had been produced in the United States. For example, if a U.S. airline lays off a number of its U.S.-based maintenance personnel and contracts with an independent aircraft maintenance company in a foreign country, the laid off personnel are not covered under present law, even if they lost their jobs because of foreign competition. The Conferees believe such workers should be potentially eligible for TAA benefits.

Similarly, the Conferees believe that workers who supply services at public agencies should be treated the same as their private-sector counterparts: if such workers are laid off because their employer contracts with a supplier in a foreign country for the services that the workers had supplied, the workers should be able to seek TAA benefits.

The provision provides that in cases involving production or service relocation or foreign contracting, a group of workers (including workers in a public agency) may be certified as eligible for adjustment assistance if the shift “contributed importantly” to such workers’ separation or threat of separation. This requirement is identical to the existing causal link requirement in section 222(a)(2)(A)(iii), which establishes the criteria for certifying workers on the basis of “increased imports.”

The Conferees understand that the Department of Labor has interpreted the “contributed importantly” requirement in section 222(a)(2)(A)(iii) to mean that imports must have been a factor in the layoffs or threat thereof. Or, in other words, under present law the Secretary of Labor will certify a group of workers as eligible for assistance if the facts demonstrate a causal

nexus between increased imports and the workers' separation or threat thereof. The Conferees approve of the Department's interpretation of the "contributed importantly" requirement and expect that the Department will continue to apply it in future cases involving increased imports. Similarly, the Conferees also understand that the existing language in section 222(a)(2)(B) addressing production relocation contains an implicit causation requirement. Thus, the Department has required production relocation under section 222(a)(2)(B) to be a factor in the workers' separation or threat thereof. The provision makes the requirement explicit. The Conferees emphasize that by making the "contributed importantly" requirement in section 222(a)(2)(B) explicit, no change in the Department's administration of cases involving production relocation is intended. The Conferees expect that this change in section 222 would not affect the outcomes that the Department has been reaching under present law in such cases, and will not alter outcomes in future cases. Thus, as has been the case, if the Department finds that production relocation was a factor in the layoff (or threat thereof) of a group of workers in the United States, the Conferees expect that the Secretary will certify such workers as eligible for adjustment assistance.

Finally, with respect to certifications involving production or service relocations or foreign contracting, the Conferees recognize that there may be delays in time between when the domestic layoffs (or threat of layoffs) occur, and when the production or service relocation or foreign contracting occurs. The Conferees intend that the Department of Labor certify petitions where there is credible evidence that production or service relocation or foreign contracting will occur, and when the other requirements of the statute are met. Such evidence could include the conclusion of a contract relating to foreign production of the article, supply of services, or acquisition of the article or service at issue; the construction, purchase, or renting of foreign facilities for the production of the article, supply of the service, or acquisition of the article or service at issue; or certified statements by a duly authorized representative at the workers' firm that the firm intends to engage in production or service relocation or foreign contracting. The Conferees are aware of concerns that the Secretary may rely on inaccurate information in making its determinations, including when denying certification of petitions. The provision addresses these concerns by requiring the Secretary to obtain certifications of all information obtained from a firm or customer through questionnaires as well as other information from a firm or customer that the Secretary relies upon in making a determination under section 223, unless the Secretary has a reasonable basis for determining that the information is accurate and complete.

The Conferees are also aware of concerns that some firms and customers fail to respond to the Secretary's requests for information or provide inaccurate or incomplete information. The subpoena, confidentiality of information, and penalty language included in this provision are designed to address these problems.

The provision would also apply if the Secretary needs to obtain information from a customer's customer, such as in an investigation involving component part suppliers.

#### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

***Group Eligibility – Component Parts (Section 1701 (amending Section 222 of the Trade Act of 1974))***

**Present Law**

Under present law, U.S. suppliers of inputs (i.e., component parts) may be certified for TAA benefits only pursuant to the secondary workers provision of section 222(b), which requires that the downstream producer have employed a group of workers that received TAA certification. Thus, for example, domestic producers of taconite have been unable to obtain certification for TAA benefits when downstream producers of steel slab have not obtained certification. Additionally, U.S. suppliers of inputs have been unable to obtain certification for TAA benefits in situations in which there is a shift in imports from articles incorporating their inputs to articles incorporating inputs produced outside the United States.

**Explanation of Provision**

The provision allows for the certification of workers in a firm when imports of the finished article incorporating inputs produced outside the United States that are like or directly competitive with imports of the finished article produced using U.S. inputs have increased and the firm has met the other criteria for certification, including a significant number of workers being totally or partially separated, a decrease in sales or production, and the increase in imports has contributed importantly to the workers' separation.

For example, under the new provision, workers in a U.S. fabric plant may be certified if the U.S. firm sold fabric to a Honduran apparel manufacturer for production of apparel subsequently imported into the United States and (1) the Honduran apparel manufacturer ceased purchasing, or decreased its purchasing, of fabric from the U.S. producer and, instead, used fabric from another country; or (2) imports of apparel from another country using non-U.S. fabric that are like or directly competitive with imports of Honduran apparel using U.S. fabric have increased.

Prior to certification, the Department of Labor would also have to determine that the firm met the other statutory requirements for certification, including that a significant number of workers had been totally or partially separated, or are threatened to become totally or partially separated, the sales or production of the petitioning fabric firm had decreased, and the increased imports of apparel using non-U.S. fabric had contributed importantly to that decrease and to the workers' separation or threat thereof.

Likewise, workers in a U.S. picture tube manufacturing plant that sells picture tubes to a Mexican television manufacturer for production of televisions subsequently imported into the United States would be certified under section 222 if the U.S. manufacturer's sales or production of picture tubes decreased and (1) the manufacturer of televisions located in Mexico switched to picture tubes produced in another country; or (2) imports of televisions from another country using non-U.S. picture tubes that are like or directly competitive with imports of Mexican televisions using U.S. picture tubes have increased.

As in the apparel example above, prior to certification, the Department of Labor would also have to determine that the picture tube firm met the other statutory requirements for certification,

including that a significant number of workers had been totally or partially separated, or are threatened to become totally or partially separated, the sales or production of the petitioning picture tube firm had decreased, and the increased imports of televisions using non-U.S. picture tubes had contributed importantly to that decrease and to the workers' separation or threat thereof.

### **Reasons for Change**

Section 222(a) is being amended to provide improved TAA coverage for U.S. suppliers of inputs, and to address situations where suppliers of component parts have been unable to obtain certification for TAA benefits because of gaps in coverage under present law.

The amended language is broad enough to encompass both the situation in which the input producer's customer switches to inputs produced outside the United States, and the situation in which the input producer's customer is displaced by a third country producer, because both situations may equally impact the sales or production of the domestic input producer.

Additionally, for purposes of section 222(a)(2)(A)(ii)(III), as in other instances, when company-specific data is unavailable, the Secretary may reasonably rely on such aggregate data or such other information as the Secretary deems appropriate.

As reflected in the examples above, the Conferees intend that the Secretary of Labor should interpret the term component parts, as used in section 222(a)(2)(A)(ii)(III), flexibly. For example, the Conferees intend that uncut fabric would be considered to be a component part of apparel for purposes of this provision, even though, for purposes of other trade laws, U.S. Customs and Border Protection might not consider such fabric to be a component part.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

*Separate Basis for Certification (Section 1702 (amending Section 222 of the Trade Act of 1974))*

### **Present Law**

There is no provision in present law.

### **Explanation of Provision**

The provision amends section 222(c) of the Trade Act by providing that a petition filed under section 221 of the Trade Act on behalf of a group of workers in a firm, or appropriate subdivision of a firm, meets the requirements of subsection 222(a) of the Trade Act if the firm is publicly identified by name by the U.S. International Trade Commission ("ITC") as a member of a domestic industry in (1) an affirmative determination of serious injury or threat thereof in a global safeguard investigation under section 202(b)(1) of the Trade Act; (2) an affirmative

determination of market disruption or threat thereof in a China safeguard investigation under section 421(b)(1) of the Trade Act; or (3) an affirmative final determination of material injury or threat thereof in an antidumping or countervailing duty investigation under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A)), but only if the petition is filed within 1 year of the date that notice of the affirmative ITC determination is published in the Federal Register (or, in the case of a global safeguard investigation under section 202(b)(1), a summary of the report submitted to the President by the ITC under section 202(f)(1) is published in the Federal Register under section 202(f)(3)) and the workers on whose behalf such petition was filed have become totally or partially separated from such workers' firm within either that 1-year period or the 1-year period preceding the date of such publication.

### **Reasons for Change**

The Conferees note that the provision allows workers in firms publicly identified by name in certain ITC investigations to be eligible for adjustment assistance on the basis of an affirmative injury determination by the ITC under certain circumstances, and without an additional determination by the Secretary of Labor that either increased imports of a like or directly competitive article contributed importantly to such workers' separation or threat of separation (and to an absolute decline in the sales or production, or both, of such workers' firm or subdivision), or that a shift in production of articles contributed importantly to such workers' separation or threat of separation.

In order for workers to avail themselves of this provision, the petition must be filed with the Secretary (and with the Governor of the State in which such workers' firm or subdivision is located) within 1 year of the date of publication in the Federal Register of the applicable notice from the ITC and the workers on whose behalf such petition was filed must have become totally or partially separated from such workers' firm within either that 1-year period or the 1-year period preceding such date of publication.

If a petition is filed on behalf of such workers more than 1 year after the date that the applicable notice from the ITC is published in the Federal Register, it will remain necessary for the Secretary of Labor to investigate the petition and determine that the statutory criteria for certifying such workers in section 222 are satisfied.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

*Determinations by the Secretary of Labor (Section 1703 (amending Section 223 of the Trade Act of 1974))*

### **Present Law**

The Secretary is required to investigate petitions filed by workers and determine whether such workers are eligible for TAA benefits. A summary of such group eligibility determination,

together with the Secretary's reasons for making the determination, must be promptly published in the Federal Register. Similarly, a termination of a certification, together with the Secretary's reasons for the termination, must be promptly published in the Federal Register.

#### **Explanation of Provision**

This section requires the Secretary to publish (1) a summary of a group eligibility determination, together with the Secretary's reasons for the determination; and (2) a certification termination, together with the Secretary's reasons for the termination, promptly on the Department's website (as well as in the Federal Register). The section also requires the Secretary to establish standards for investigating petitions, and criteria for making determinations. Moreover, the Secretary is required to consult with the Senate Committee on Finance ("Senate Finance Committee") and the Committee on Ways and Means of the House of Representatives ("House Committee on Ways and Means") 90 days prior to issuing a final rule on the standards.

#### **Reasons for Change**

To improve accountability, transparency, and public access to this information, the Secretary should be required to post (1) a summary of a group eligibility determination, together with the Secretary's reasons for the determination; and (2) a certification termination, together with the Secretary's reasons for the termination, promptly on the Department's website (as well as in the Federal Register). The Secretary also should have objective and transparent standards for investigating petitions, and criteria for the basis on which an eligibility determination is made. The Secretary should consult with Senate Finance and House Ways and Means to ensure the intent of Congress is accurately reflected in such standards.

#### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

*Monitoring and Reporting Relating to Service Sector (Section 1704 (amending Section 282 of the Trade Act of 1974))*

#### **Present Law**

Present law requires the Secretaries of Commerce and Labor to establish and maintain a program to monitor imports of articles into the United States, including (1) information concerning changes in import volume; (2) impacts on domestic production; and (3) impacts on domestic employment in industries producing like or competitive products. Summaries must be provided to the Adjustment Assistance Coordinating Committee, the ITC, and Congress.

#### **Explanation of Provision**

The provision is renamed "Trade Monitoring and Data Collection." The provision requires the Secretaries of Commerce and Labor to monitor imports of services (in addition to articles). To address data limitations, the provision requires the Secretary of Labor, not later than 90 days after enactment, to collect data on impacted service workers (by State, industry, and cause).

Finally, it requires the Secretary of Commerce, in consultation with the Secretary of Labor, to report to Congress, not later than one year after enactment, on ways to improve the timeliness and coverage of data regarding trade in services.

### **Reasons for Change**

Existing data on trade in services are sparse. Because of the increases in trade in services, the Conferees believe that it is critical that the government collect data on imports of services and the impact of these imports on U.S. workers. Such information will be useful when considering any further refinement of TAA that Congress may contemplate. More generally, the additional data will give U.S. businesses and workers insight into trade in services, helping them better compete in the global marketplace.

### **Effective Date**

The provision goes into effect on the date of enactment of this Act.

## **2. Subpart B – Industry Notifications Following Certain Affirmative Determinations**

*Notifications following certain affirmative determinations (Section 1711 (amending Section 224 of the Trade Act of 1974))*

### **Present Law**

Present law includes a provision requiring the ITC to notify the Secretary of Labor when it begins a section 201 global safeguard investigation. The Secretary must then begin an investigation of (1) the number of workers in the relevant domestic industry; and (2) whether TAA will help such workers adjust to import competition. The Secretary of Labor must submit a report to the President within 15 days of the ITC's section 201 determination. The Secretary's report must be made public and a summary printed in the Federal Register.

### **Explanation of Provision**

The provision expands the notification requirement to instruct the ITC to notify the Secretary of Labor and the Secretary of Commerce, or the Secretary of Agriculture when dealing with agricultural commodities, when it issues an affirmative determination of injury or threat thereof under sections 202 or 421 of the Trade Act, an affirmative safeguard determination under a U.S. trade agreement, or an affirmative determination in a countervailing duty or dumping investigation under sections 705 or 735 of the Tariff Act of 1930. Additionally, the provision requires the President to notify the Secretaries of Labor and Commerce upon making an affirmative determination in a safeguard investigation relating to textile and apparel articles. Whenever an injury determination is made, the Secretary of Labor must notify employers, workers, and unions of firms covered by the determination of the workers' potential eligibility for TAA benefits and provide them with assistance in filing petitions. Similarly, the Secretary of Commerce must notify firms covered by the determination of their potential eligibility for TAA

for Firms and provide them with assistance in filing petitions, and the Secretary of Agriculture must do the same for investigations involving agricultural commodities.

### **Reasons for Change**

A significant hurdle to ensuring that workers and firms avail themselves of TAA benefits is the lack of awareness about the program. In situations like these, where the ITC has made a determination that a domestic industry has been injured as a result of trade, giving notice to the workers and firms in that industry of TAA's potential benefits is warranted.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

*Notification to Secretary of Commerce (Section 1712 (amending Section 225 of the Trade Act of 1974))*

### **Present Law**

Under present law, the Secretary of Labor must provide workers with information about TAA and provide whatever assistance is necessary to help petitioners apply for TAA. The Secretary must also reach out to State Vocational Education Boards and their equivalent agencies, as well as other public and private institutions, about affirmative group certification determinations and projections of training needs.

The Secretary must also notify each worker who the State has reason to believe is covered by a group certification in writing via U.S. Mail of the benefits available under TAA. If the worker lost his job before group certification, then the notice occurs at the time of certification. If the worker lost her job after group certification, then the notice occurs at the time the worker loses her job. The Secretary must also publish notice in the newspapers circulating in the area where the workers reside.

### **Explanation of Provision**

The provision requires the Secretary of Labor, upon issuing a certification, to notify the Secretary of Commerce of the identity of the firms covered by a certification.

### **Reasons for Change**

Firms employing workers certified as eligible for TAA benefits may not be aware that they may be eligible for assistance under the TAA for Firms program. Requiring the Secretary of Labor to notify the Secretary of Commerce when workers at a firm are certified as TAA eligible will help put these firms on notice of their potential TAA for Firms eligibility.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

### **3. Subpart C – Program Benefits**

#### ***Qualifying requirements for workers (Section 1721 (amending Section 231 of the Trade Act of 1974))***

#### **Present Law**

Present law authorizes a worker to receive TAA income support (known as “Trade Readjustment Allowance” or “TRA”) for weeks of unemployment that begin 60 days after the date of filing the petition on which certification was granted.

To qualify for TAA benefits, a worker must have (1) lost his job on or after the trade impact date identified in the certification, and within two years of the date of the certification determination; (2) been employed by the TAA certified firm for at least 26 of the 52 weeks preceding the layoff; and (3) earned at least \$30 or more a week in that employment.

A worker must qualify for, and exhaust, his State unemployment compensation (“UC”) benefits before receiving a weekly TRA.

Further, to receive TRA, a worker must be enrolled in an approved training program by the later of 8 weeks after the TAA petition was certified, or 16 weeks after job loss (the “8/16” deadline). The 8/16 deadline can be extended in certain limited circumstances. Workers may also receive limited waivers of the 8/16 training enrollment deadline.

Present law provides for waivers in the following circumstances: (1) the worker has been or will be recalled by the firm; (2) the worker possesses marketable skills; (3) the worker is within 2 years of retirement; (4) the worker cannot participate in training because of health reasons; (5) training enrollment is unavailable; or (6) training is not reasonably available to the worker (nothing suitable, no reasonable cost, no training funds).

Waivers last 6 months, unless the Secretary determines otherwise, and will be revoked if the basis for the waiver no longer exists. States have the authority to issue waivers. By regulation, State and local agencies must “review” the waivers every thirty days.

If a worker fails to begin training or has stopped participating in training without justifiable cause or if the worker’s waiver is revoked, the worker will receive no income support until the worker begins or resumes training.

#### **Explanation of Provision**

The provision amends existing law to change the date on which a worker can receive TAA income support from 60 days from the date of the petition to the date of certification. The provision strikes the 8/16 rule and extends the deadline for trade-impacted workers. If a worker lost his job before the certification, then the worker has 26 weeks from the date of

certification to enroll in training. If the worker lost his job after certification, he has 26 weeks from the date he lost his job to enroll in training.

The provision also gives the Secretary the authority to waive the new 26 week training enrollment deadline if a worker was not given timely notice of the deadline.

The provision clarifies that the “marketable skills” training waiver may apply to workers who have post-graduate degrees from accredited institutions of higher education. The provision requires the State to review training waivers 3 months after such waiver is issued, and every month thereafter.

### **Reasons for Change**

The Conferees believe that the 60-day rule makes little sense and leads to the following scenario: a worker laid off well before certification could exhaust his unemployment insurance and yet have to wait to receive the trade readjustment assistance to which the worker was otherwise entitled.

The Government Accountability Office, the Department of Labor, the states, and workers’ advocacy groups have criticized the 8/16 deadline as being too short. First, these deadlines often occur while the worker is still on traditional UI (most workers receive up to 26 weeks of State UI compensation). During those 26 weeks, most workers are actively engaged in a job search and are not focused on retraining. Forcing workers to enroll in training at such an early stage can discourage active job search. Second, typically, a worker decides to consider training only after an extended period of unsuccessful job searching. Under present law, workers are only beginning to consider training options close to the 8/16 deadline, and often make hurried decisions about training merely to preserve their TAA eligibility. Third, when large numbers of certified workers are laid off all at once, it can be difficult for TAA administrators to perform adequate training assessments and meet the 8/16 deadline. *See* GAO Report 04-1012. Therefore, extending the enrollment deadlines to the later of 26 weeks after layoff or certification would provide a reasonable period for a worker to search for employment and consider training options, as well as for the State to assess workers and meet the enrollment deadlines.

While recognizing the necessity of waivers in certain circumstances, states have identified the monthly review of waivers to be burdensome. Many states have complained that processing the sheer volume of waivers requires significant administrative time and cost. For example, according to GAO, 59,375 waivers were issued in 2005 (and 60,948 in 2004). The new requirement that waivers be reviewed initially three months rather than one month after they are issued reduces the administrative burden while continuing to provide for appropriate review, thus allowing the State to ensure the worker continues to qualify for the waiver. The provision does not require a review of waivers issued on the basis that an adversely affected worker is within two years of being eligible for Social Security benefits or a private pension. The status of such workers is unlikely to change and thus, automatic review of their waivers is a waste of resources. States still retain the discretion to review such waivers if circumstances warrant. When a worker has failed to meet the training enrollment deadline through no fault of his own, the Conferees believe that there should be redress. Under present law, there is none. The Department of Labor has acknowledged that this is a problem.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

### ***Weekly amounts (Section 1722 (amending Section 232 of the Trade Act of 1974))***

#### **Present Law**

TRA is the income support that workers receive weekly. It is equal to the worker's weekly UI benefit. TRA is divided into two main periods: "Basic TRA" and "Additional TRA." Under present law, because of the operation of State UI laws, workers who are in training and working part-time run the risk of resetting their UI benefits (and their TRA benefit) at the lower part-time level which would leave them with insufficient income support to continue with training.

#### **Explanation of Provision**

The provision amends existing law to (1) disregard, for purposes of determining a worker's weekly TRA amount, earnings from a week of work equal to or less than the worker's most recent unemployment insurance benefits where the worker is working part-time and participating in full-time training; and (2) ensure that workers will retain the amount of income support provided initially under TRA even if a new UI benefit period (with a lower weekly amount) is established due to the worker obtaining part-time or short-term full-time employment.

#### **Reasons for Change**

The Conferees believe that the disincentive to combining full-time training and part-time work needs to be removed so that workers who might not otherwise be in training, but for the additional income they earn working part-time, are not excluded from the program.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

### ***Limitations on Trade Readjustment Allowances; Allowances for Extended Training and Breaks in Training (Section 1723 (amending Section 233(a) of the Trade Act of 1974))***

#### **Present Law**

Basic TRA is available for 52 weeks minus the number of weeks of unemployment insurance for which the worker was eligible (usually 26 weeks). Basic TRA must be used within 104 weeks after the worker lost his job (130 weeks for workers requiring remedial training). Any Basic TRA not used in that period is foregone.

Additional TRA is available for up to 52 more weeks if the worker is enrolled in and participating in training. The worker receives Additional TRA only for weeks in training. A

worker on an approved break in training of 30 days or less is considered to be participating in training and therefore eligible for TRA during that period. Additional TRA must otherwise be used over a consecutive period (*e.g.*, 52 consecutive weeks).

Participation in remedial training makes a worker eligible for up to 26 more weeks of TRA.

### **Explanation of Provision**

The provision increases the number of weeks for which a worker can receive Additional TRA from 52 to 78 and expands the time within which a worker can receive such Additional TRA from 52 weeks to 91 weeks.

### **Reasons for Change**

The Conferees believe that the program must provide incentives for eligible workers to participate in long term training, such as a two-year Associate's degree, a nursing certification, or completion of a four-year degree (if that four-year degree was previously initiated or if the worker will complete it using non-TAA funds).

Typically, workers cannot participate in a training program without TAA income support. Thus, because many workers exhaust at least some of their basic TRA while they seek another job instead of beginning training, they are limited to shorter-term training options, both practically and because training approvals are usually tied to the period of TRA eligibility. The purpose of the additional 26 weeks of income support, for a total of 78 weeks of additional TRA, is to provide an opportunity for workers to engage in long term training that might not have otherwise been a viable option.

The Conferees note that the Department of Labor's practice is to approve, before training begins, a training program consisting of a course or related group of courses designed for an individual to meet a specific occupational goal. 20 CFR 617.22(f)(3)(i). Nothing in this section is intended to change current Department of Labor practice. The additional 26 weeks of income support are intended to provide more options for long term training at the time when this individual training program is designed and approved.

In short, the new, additional income support is available only for workers in long term training.

The Conferees note that, at the same time, it is not their intent to limit the Secretary's ability, in certain, limited circumstances, to modify a worker's training program where the Secretary determines that the current training program is no longer appropriate for the individual.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

***Special Rules for Calculation of Eligibility Period (Section 1724 (amending Section 233 of the Trade Act of 1974))***

### **Present Law**

There is no provision in present law.

### **Explanation of Provision**

The provision states that periods during which an administrative or judicial appeal of a negative determination is pending will not be counted when calculating a worker's eligibility for TRA. Moreover, the provision also grants justifiable cause authority to the Secretary to extend certain applicable deadlines concerning receipt of Basic and Additional TRA. Further, the provision allows workers called up for active duty military or full-time National Guard service to restart the TAA enrollment process after completion of such service.

The provision also strikes the 210 day rule, which mandates that a worker is not eligible for additional TRA payments if the worker has not applied for training 210 days from certification or job loss, whichever is later.

### **Reasons for Change**

The Conferees believe that tolling of deadlines is necessary; otherwise judicial relief obtained from a successful court challenge would be meaningless, as the decision of the court will inevitably take place after the TAA program eligibility deadlines have passed. The Department of Labor provides for similar tolling in its present and proposed regulations.

Similarly, the Conferees believe that affording the Secretary flexibility in instances where a worker is ineligible through no fault of her own is consistent with the spirit of the program and will help ensure that workers get the retraining they need. The amendment permits the Secretary to extend the periods during which trade readjustment allowances may be paid to an individual if there is justifiable cause. The provision does not increase the amount of such allowances that are payable. The Conferees intend that the justifiable cause extension should allow the Secretary equitable authority to address unforeseen circumstances, such as a health emergency. The 210 day deadline is superseded by the 8/16 deadline in current law, the new 26/26 enrollment deadlines under these amendments, and the requirement that a worker be in training to receive additional TRA.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

*Application of State Laws and Regulations on Good Cause for Waiver of Time Limits or Late Filing of Claims (Section 1725 (amending Section 234 of the Trade Act of 1974))*

### **Present Law**

A State's unemployment insurance laws apply to a worker's claims for TRA.

### **Explanation of Provision**

The provision makes a State's "good cause" law, regulations, policies, and practices applicable when the State is making determinations concerning a worker's claim for TRA or other adjustment assistance.

### **Reasons for Change**

Most States have "good cause" laws allowing the waiver of a statutory deadline when the deadline was missed because of agency error or for other reasons where the claimant was not at fault. These good cause laws apply to administration of State UI laws. The Department of Labor, by regulation, has precluded application of State good cause laws to TAA. This prohibition unjustifiably penalizes workers who miss a deadline through no fault of their own.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

*Employment and Case Management Services; Administrative Expenses and Employment and Case Management Services (Sections 1726 and 1727 (amending Section 235 of the Trade Act of 1974))*

### **Present Law**

Present law requires the Secretary of Labor to make "every reasonable effort" to secure services for affected workers covered by a certification including "counseling, testing, and placement services" and "[s]upportive and other services provided for under any other Federal law," including WIA one-stop services. Typically, the Secretary provides these services through agreements with the States.

### **Explanation of Provision**

The provisions require the Secretary and the States to, among other things (1) perform comprehensive and specialized assessments of enrollees' skill levels and needs; (2) develop individual employment plans for each impacted worker; and (3) provide enrollees with (a) information on available training and how to apply for such training, (b) information on how to apply for financial aid, (c) information on how to apply for such training, (d) short-term prevocational services, (e) individual career counseling, (f) employment statistics information, and (g) information on the availability of supportive services.

The provision requires the Secretary, either directly or through the States (through cooperating agreements), to make the employment and case management services described in section 235 available to TAA eligible workers. TAA eligible workers are not required to accept or participate in such services, however, if they choose not to do so.

These provisions provide for each State to receive funds equal to 15 percent of its training funding allocation on top of its training fund allocation. Not more than two-thirds of these

additional funds may be used to cover administrative expenses, and not less than one-third of such funds may be used for the purpose of providing employment and case management services, as defined under section 235. Finally, the section provides for an additional \$350,000 to be provided to each State annually for the purpose of providing employment and case management services. With respect to these latter funds, States may decline or otherwise return such funds to the Secretary.

### **Reasons for Change**

States incur costs to administer the TAA program, including for processing applications and providing employment and case management services. While appropriators customarily provide the Department of Labor with administrative funds equal to 15 percent of the total training funds for disbursement to the States, the Conferees believe that this practice should be codified, with the changes discussed above.

The Conferees believe that the employment services and case management funding provided for in this section should be in addition to, and not offset, any funds that the State would otherwise receive under WIA or any other program.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

### ***Training Funding (Section 1728 (amending Section 236 of the Trade Act of 1974))***

#### **Present Law**

The total amount of annual training funding provided for under present law is \$220,000,000. During the year, if the Secretary determines that there is inadequate funding to meet the demand for training, the Secretary has the authority to decide how to apportion the remaining funds to the States.

Based on internal department policy, at the beginning of each fiscal year, the Department of Labor allocates 75 percent of the training funds to States based on each State's training expenditures and the average number of training participants over the previous 2 1/2 years. The previous year's allocation serves as a floor. The Department of Labor also has a "hold harmless" policy that ensures that each State's initial allocation can be no less than 85 percent of its initial allocation in the previous year. The Department of Labor holds the remaining 25 percent in reserve to distribute to States throughout the year according to need; most of the remaining funds are disbursed at the end of the fiscal year. States have 3 years to spend their federal funds. If the funds are not spent, the money reverts back to the General Treasury.

Under present law, the Secretary shall approve training if (1) there is no suitable employment; (2) the worker would benefit from appropriate training; (3) there is a reasonable expectation of employment following training (although not necessarily immediately available employment); (4) the approved training is reasonably available to the worker; (5) the worker is qualified for the

training; and (6) training is suitable and available at a reasonable cost. "Insofar as possible," the Secretary is supposed to ensure the provision of training on the job. Training will be paid for directly by the Secretary or using vouchers.

One of the statutory criteria for approval of training is that the worker be qualified to undertake and complete such training. The statute doesn't specifically address how the income support available to a worker is to be considered in determining the length of training the worker is qualified to undertake. Another of the statutory training approval criteria is that the training is available at a reasonable cost. The statute doesn't specifically address if funds other than those available under TAA may be considered in making this determination.

### **Explanation of Provision**

The provision strikes the obsolete requirement that the Secretary of Labor shall "assure the provision" of training on the job.

This provision increases the training cap from \$220,000,000 to \$575,000,000 in FY2009 and FY2010, prorated for the period beginning October 1, 2010 and ending December 31, 2010. The provision requires the Secretary to make an initial distribution of training funds to the States as soon as practicable after the beginning of the fiscal year based on the following criteria: (1) the trend in numbers of certified workers; (2) the trend in numbers of workers participating in training; (3) the number of workers enrolled in training; (4) the estimated amount of funding needed to provide approved training; and (5) other factors the Secretary determines are appropriate. The provision specifies that initial distribution of training funds to a State may not be less than 25 percent of the initial distribution to that State in the previous fiscal year.

The provision requires the Secretary to establish procedures for the distribution of the funds held in reserve, which may include the distribution of such funds in response to requests made by States in need of additional training funds. The provision also requires the Secretary to distribute 65 percent of the training funds in the initial distribution, and to distribute at least 90 percent of training funds for a particular fiscal year by July 15 of that fiscal year.

The provision directs the Secretary to decide how to distribute funds if training costs will exceed available funds.

The provision would specify that in determining if a worker is qualified to undertake and complete training, the training may be approved for a period that is longer than the period for which TRA is available if the worker demonstrates the financial ability to complete the training after TRA is exhausted. It is intended that financial ability means the ability to pay living expenses while in TAA-funded training after the period of TRA eligibility.

The provision would specify that in determining whether the costs of training are reasonable, the Secretary may consider whether other public or private funds are available to the worker, but may not require the worker to obtain such funds as a condition for approval of training. This means, for example, that if a training program would be determined not to have a reasonable cost if only the use of TAA training funds were considered, the Secretary may consider the availability of other public and private funds to the worker. If the worker voluntarily commits to

using such funds to supplement the TAA training funds to pay for the training program, the training program may be approved. However, the Secretary may not require the worker to use the other public or private funds where the costs of the training program would be reasonable using only TAA training funds.

Finally, the provision requires the Secretary to issue regulations in consultation with the Senate Finance Committee and the House Committee on Ways and Means.

### **Reasons for Change**

The Conferees believe that the training cap needs to be increased for two reasons. First, more funding is needed to cover the expanded group of TAA eligible workers because of changes made elsewhere in the bill (e.g., coverage of service workers, expanded coverage of manufacturing workers). Second, during high periods of TAA usage, the existing training funding has proved to be insufficient. Some states have run out of training funds, resulting in some States freezing enrollment of eligible workers in training. See GAO-04-1012.

As the GAO has documented, there are significant problems with the Department's method of allocating training funds. The primary problem is that the Department of Labor's method of allocation appears to result in insufficient funds for some States. This appears to be occurring because of the Department's reliance on historical usage and a "hold harmless" policy. In particular, States that were experiencing heavy layoffs at the time the initial allocation formula was implemented may no longer be experiencing layoffs at the same rate, but still receive significant allocations from the Department. In contrast, a State experiencing relatively few layoffs several years ago may now have far greater numbers of layoffs, but still receives a limited amount in its distribution. In short, the allocation that States receive at the beginning of the fiscal year may not reflect their present demand for training services. The provision addresses these problems by lowering the "hold harmless" provision to 25 percent, requiring initial and subsequent distributions to be based on need, and by requiring that 90 percent of the funds be allocated by July 15 of each fiscal year. Additionally, the Conferees expect the Secretary to distribute the remaining funds as soon as possible after that date.

In order to facilitate the approval of longer-term training, the Conferees intend to ensure that the period of approved training is not necessarily limited to the duration of TRA. Where the worker demonstrates the ability to pay living expenses while in TAA funded training after TRA is exhausted, such training should be approved if the other training approval criteria are also met.

The Conferees intend to ensure that training programs that would otherwise not be approved under TAA due to costs may be approved if a worker voluntarily commits to using supplemental public or private funds to pay a portion of the costs.

It is also the intent that, together, these amendments to the training approval criteria allow training to be approved for a period that is longer than the period for which TRA and TAA-funded training is available if the worker demonstrates the financial ability to pay living expenses and pay for the additional training costs using other funds after TRA and the TAA-funded training are exhausted.

### **Effective Date**

The provision increasing the training cap goes into effect upon the date of enactment of this Act. The provisions relating to training fund distribution procedures go into effect October 1, 2009. The other provisions in this section go into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and apply to petitions filed on or after that date.

### ***Prerequisite Education, Approved Training Programs (Section 1729 (amending Section 236 of the Trade Act of 1974))***

### **Present Law**

Under present law, approvable training includes employer-based training (on-the-job training/customized training), training approved under the Workforce Investment Act of 1998, training approved by a private industry council, any remedial education program, any training program whose costs are paid by another federal or State program, and any other program approved by the Secretary. Additionally, remedial training is approvable and participation in such training makes a worker eligible for up to 26 more weeks of TAA-related income support.

### **Explanation of Provision**

The provision clarifies that existing law allows training funds to be used to pay for apprenticeship programs, any prerequisite education required to enroll in training, and training at an accredited institution of higher education (such as those covered by 102 of the Higher Education Act), including training to obtain or complete a degree or certification program (where completion of the degree or certification can be reasonably expected to result in employment). The provision also prohibits the Secretary from limiting training approval to programs provided pursuant to the Workforce Investment Act of 1998.

The provision offers up to an additional 26 weeks of income support while workers take prerequisite training or remedial training necessary to enter a training program. A worker may enroll in remedial training or prerequisite training, or both, but may not receive more than 26 weeks of additional income support.

### **Reasons for Change**

Present law does not explicitly state whether TAA training funds may be used to obtain a college or advanced degree. Some States have interpreted this silence to preclude enrollment in a two-year community college or four-year college or university as a training option, even where a TAA participant was working towards completion of a degree prior to being laid off. The Conferees believe that States should be encouraged to approve the use of training funds by TAA enrollees to obtain training or a college or advanced degree, including degrees offered at two-year community colleges and four-year colleges or universities.

While a worker can obtain additional income support while participating in remedial training, there is no corollary support for workers participating in prerequisite training (e.g., individuals enrolling in nursing usually need basic science prerequisites, which are not considered qualifying

remedial training). States have requested additional income support for workers who participate in prerequisite training.

The Conferees believe that while WIA-approved training is an approvable TAA training option, it should not be the only one that TAA enrollees are authorized to pursue. The Conferees are concerned that some States have restricted training opportunities to those approved under WIA. According to the Congressional Research Service, many community colleges, for instance, do not get WIA certification because of its costly reporting requirements. To limit TAA training opportunities in this way unacceptably curbs the scope of training that TAA enrollees might elect to participate in and potentially impairs their ability to get retrained and reemployed.

#### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

*Pre-Layoff and Part-Time Training (Section 1730 (amending Section 236 of the Trade Act of 1974))*

#### **Present Law**

Present law does not permit pre-layoff or part-time training,

#### **Explanation of Provision**

This provision specifies that the Secretary may approve training for a worker who (1) is a member of a group of workers that has been certified as eligible to apply for TAA benefits; (2) has not been totally or partially separated from employment; and (3) is determined to be individually threatened with total or partial separation. Such training may not include on-the-job training, or customized training unless such customized training is for a position other than the worker's current position.

Additionally, the provision permits the Secretary to approve part-time training, but clarifies that a worker enrolled in part-time training is not eligible for a TRA.

#### **Reasons for Change**

This provision explicitly establishes Congress' intent that workers be eligible to receive pre-layoff and part-time training.

#### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

*On-the-Job Training (Section 1731 (amending Section 236 of the Trade Act of 1974))*

### **Present Law**

Current law provides that the Secretary may approve on-the-job training (“OJT”), but does not govern the content of acceptable OJT.

### **Explanation of Provision**

This provision permits the Secretary to approve OJT for any adversely affected worker if the worker meets the training requirements, and the Secretary determines the OJT (1) can reasonably lead to employment with the OJT employer; (2) is compatible with the worker’s skills; (3) will allow the worker to become proficient in the job for which the worker is being trained; and (4) the State determines the OJT meets necessary requirements. The Secretary may not enter into contracts with OJT employers that exhibit a pattern of failing to provide workers with continued long-term employment and adequate wages, benefits, and working conditions as regular employees.

### **Reasons for Change**

The provision incorporates requirements to ensure OJT is effective. Specifically, OJT must be (1) reasonably expected to lead to suitable employment; (2) compatible with the workers’ skills; and (2) include a State-approved benchmark-based curriculum. Moreover, the provision is intended to prevent employers from treating workers participating in OJT differently in terms of wages, benefits, and working conditions from regular employees who have worked a similar period of time and are doing the same type of work.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

### ***Eligibility for Unemployment Insurance and Program Benefits While in Training (Section 1732 (amending Section 236 of the Trade Act of 1974))***

### **Present Law**

Current law states that a worker may not be deemed ineligible for UI (and thus, TAA) if they are in training or leave unsuitable work to enter training.

### **Explanation of Provision**

The provision states that a worker will not be ineligible for UI or TAA if the worker (1) is in training, even if the worker does not meet the requirements of availability for work, active work search, or refusal to accept work under Federal and State UI law; (2) leaves work to participate in training, including temporary work during a break in training; or (3) leaves OJT that did not meet the requirements of this Act within 30 days of commencing such training.

### **Reasons for Change**

The Conferees are concerned that confusion in present UI law surrounding a worker's decision to quit work to enter training and the ramifications of that decision from a UI eligibility perspective may preclude a worker from being able to participate in TAA training. The provision is meant to eliminate that confusion.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

### ***Job Search and Relocation Allowances (Section 1733 (amending Section 237 of the Trade Act of 1974))***

#### **Present Law**

The Secretary may grant an application for a job search allowance where (1) the allowance will help the totally separated worker find a job in the United States; (2) suitable employment is not available in the local area; and (3) the application is filed by the later of (a) 1 year from separation, (b) 1 year from certification, or (c) 6 months after completing training (unless the worker received a waiver, in which case the worker must file by the later of one year after separation or certification). A worker may be reimbursed for 90 percent of his job search costs, up to \$1,250.

The Secretary may grant an application for a relocation allowance where: (1) the allowance will assist a totally separated worker relocate within the United States; (2) suitable employment is not available in the local area; (3) the affected worker has no job at the time of relocation; (4) the worker has found suitable employment that may reasonably be expected to be of long-term duration; (5) the worker has a bona fide offer of employment; and (6) the worker filed the application the later of (a) 425 days from separation, (b) 425 days from certification, or (c) 6 months after completing training (unless the worker received a waiver, in which case the worker must file by the later of 425 days after separation or certification). A worker may be reimbursed for 90 percent of his relocation costs plus a lump sum payment of three times the worker's weekly wage up to \$1,250.

#### **Explanation of Provision**

The provision reimburses 100 percent of a worker's job search expenses, up to \$1,500, and 100 percent of a worker's relocation expenses, and increases the additional lump sum payment for relocation to a maximum of \$1,500. It also strikes the provision in existing law under which a worker who has completed training but who received a prior training waiver has a shorter period to apply for a job search allowance and relocation allowance than other workers who have completed training.

### **Reasons for Change**

The Conferees believe that the job search and relocation allowances need to be increased to reflect the cost of inflation and the cost and difficulty a worker faces when looking for work and taking a job outside the worker's local community.

The Conferees believe that workers completing training should have the same periods after training to apply for job search and relocation allowances irrespective of whether a worker received a waiver from the enrollment in training requirements prior to undertaking and completing the training. This period allows workers a reasonable opportunity to obtain the same assistance as other workers needed to find and relocate to a new job after being trained.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

## **4. Subpart D – Reemployment Trade Adjustment Assistance Program**

### ***Reemployment Trade Adjustment Assistance Program (Section 1741 (amending Section 246 of the Trade Act of 1974))***

#### **Present Law**

The Trade Act of 2002 created a demonstration project for alternative trade adjustment assistance for older workers (ATAA or “wage insurance”). Through this program, some workers who are eligible for TAA and reemployed at lower wages may receive a partial wage subsidy. Under the program, States use Federal funds provided under the Trade Act to pay eligible workers up to 50 percent of the difference between reemployment wages and wages at the time of separation. Eligible workers may not earn more than \$50,000 in reemployment wages, and total payments to a worker may not exceed \$10,000 during a maximum period of two years. In addition to having been certified for TAA, such workers must be at least 50 years of age, obtain full-time reemployment with a new firm within 26 weeks of separation from employment, and have been separated from a firm that is specifically certified for ATAA. When considering certification of a firm for ATAA, the Secretary of Labor considers whether a significant number of workers in the firm are 50 years of age or older and possess skills that are not easily transferable. ATAA beneficiaries may not receive TAA benefits other than the Health Coverage Tax Credit (HCTC).

#### **Explanation of Provision**

The provision renames ATAA “reemployment TAA.” The provision eliminates the requirement that a group of workers (in addition to individuals) be specifically certified for wage insurance in addition to TAA certification. The provision eliminates the current-law requirement that a worker must find employment within 26 weeks of being laid off to be eligible for the wage insurance benefit, and replaces it with a requirement that the clock on the two-year duration of

the benefit begin at the sooner of exhaustion of regular unemployment benefits or reemployment, allowing initial receipt of the wage insurance benefit at any point during that two-year period. The provision allows workers to shift from receiving a TRA, while training, to receiving reemployment TAA, while employed, at any point during the two-year period. The provision increases the limit on wages in eligible reemployment from \$50,000 a year to \$55,000 a year. Similarly, it increases the maximum wage insurance benefit (over two years) from up to \$10,000 to up to \$12,000.

The provision lifts the restriction on wage insurance recipients' participation in TAA-funded training. It also permits workers reemployed less than full-time, but at least 20 hours a week, and in approved training, to receive the wage insurance benefit (which would be prorated if the worker is reemployed for fewer hours compared to previous employment).

### **Reasons for Change**

The Conferees believe that the reemployment TAA, or wage insurance, program is a potentially beneficial option for many older workers, but it includes unnecessary barriers to participation. The Conferees believe that changes to section 246 of the Trade Act will make the wage insurance program a more viable option for many more potentially interested workers. Inflation has lessened the maximum value of the available benefit, and increasing personal, nominal, median income has lowered the share of workers eligible to participate in the program. Several other requirements make the program inaccessible and unattractive.

Findings from the Government Accountability Office (GAO) highlight the need to reform specific aspects of the program. First, the 26-week reemployment deadline was cited by the GAO as one of "two key factors [that] limit participation." The GAO went on to note that "[o]fficials in States [the GAO] visited said that one of the greatest obstacles to participation was the requirement for workers to find a new job within 26 weeks after being laid off. For example, according to officials in one State, 80 percent of participants who were seeking wage insurance but were unable to obtain it failed because they could not find a job within the 26-week period. The challenges of finding a job within this time frame may be compounded by the fact that workers may actually have less than 26 weeks to secure a job if they are laid off prior to becoming certified for TAA. For example, a local caseworker in one State [the GAO] visited said that the 26 weeks had passed completely before a worker was certified for the benefit." Additionally, the GAO found that automatically certifying workers for the wage insurance benefit would cut the Department of Labor's workload and promote program participation. Currently, workers opting for wage insurance must also surrender eligibility for TAA-funded training and be reemployed full-time. The provision eliminates these restrictions.

The Conferees believe that eliminating the 26-week deadline for reemployment, eliminating the need for firms to be certified for wage insurance, eliminating the prohibition on wage insurance beneficiaries receiving TAA-funded training, and allowing part-time workers and former TRA recipients access to the wage insurance benefit should make the wage insurance program more accessible and attractive.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

## **5. Subpart E – Other Matters**

### ***Office of Trade Adjustment Assistance (Section 1751 (amending Subchapter C of chapter 2 of title II of the Trade Act of 1974))***

#### **Present Law**

The TAA for Workers program is currently operated by the Employment and Training Administration at the Department of Labor.

#### **Explanation of Provision**

The provision creates an Office of Trade Adjustment Assistance headed by an administrator who shall report directly to the Deputy Assistant Secretary for Employment and Training Administration. Under the provision, the administrator will be responsible for overseeing and implementing the TAA for Workers program and carrying out functions delegated to the Secretary of Labor, including: making group certification determinations; providing TAA information and assisting workers and others assisting such workers prepare petitions or applications for program benefits (including health care benefits); ensuring covered workers receive Section 235 employment and case management services; ensuring States comply with the terms of their Section 239 agreements; advocating for workers applying for benefits; and operating a hotline that workers and employers may call with questions about TAA benefits, eligibility requirements, and application procedures.

The provision requires the administrator to designate an employee of the Department with appropriate experience and expertise to receive complaints and requests for assistance, resolve such complaints and requests, compile basic information concerning the same, and carry out other tasks that the Secretary specifies.

#### **Reasons for Change**

It is the view of the Conferees that creating an Office of Trade Adjustment Assistance in the Department of Labor with primary accountability for the management and performance of the TAA for Workers program will improve the program's operation.

The creation of the Office of Trade Adjustment Assistance should not interfere with the coordination of services provided by TAA, the National Emergency Grant program, and Department of Labor Rapid Response services.

#### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act.

***Accountability of State Agencies; Collection and Publication of Program Data; Agreements with States (Section 1752 (amending Section 239 of the Trade Act of 1974))***

**Present Law**

Present law gives the Secretary of Labor the authority to delegate to the States through agreements many aspects of TAA implementation, including responsibilities to (1) receive applications for TAA and provide payments; (2) make arrangements to provide certain employment services through other Federal programs; and (3) issue waivers. It also mandates that any agreement entered into shall include sections requiring that the provision of TAA services and training be coordinated with the provision of Workforce Investment Act (WIA) services and training. In carrying out its responsibilities, each State must notify workers who apply for UI about TAA, facilitate early filing for TAA benefits, advise workers to apply for training when they apply for TRA, and interview affected workers as soon as possible for purposes of getting them into training. States must also submit to the Department of Labor information like that provided under a WIA State plan.

**Explanation of Provision**

The provision requires the Secretary, either directly or through the States (through cooperating agreements), to make the employment and case management services described in the amended section 235 available to TAA eligible workers. TAA eligible workers are not required to accept or participate in such services, however, if they choose not to do so.

The provision requires States and cooperating State agencies to implement effective control measures and to effectively oversee the operation and administration of the TAA program, including by monitoring the operation of control measures to improve the accuracy and timeliness of reported data.

The provision also requires States and cooperating State agencies to report comprehensive performance accountability data to the Secretary, on a quarterly basis.

**Reasons for Change**

To ensure that the employment and case management services described in the amended section 235 are made available to TAA enrollees as required under that section, the Conferees believe that it is necessary to incorporate those obligations into the agreements that the Department of Labor enters into with each of the States concerning the administration of TAA.

**Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

***Verification of Eligibility for Program Benefits (Section 1753 (amending Section 239 of the Trade Act of 1974))***

**Present Law**

There is no provision in present law.

### **Explanation of Provision**

Section 1753 requires a State to re-verify the immigration status of a worker receiving TAA benefits using the Systematic Alien Verification for Entitlements (SAVE) Program (42 U.S.C. 1320b-7(d)) if the documentation provided during the worker's initial verification for the purposes of establishing the worker's eligibility for unemployment compensation would expire during the period in which that worker is potentially eligible to receive TAA benefits.

The section also requires the Secretary to establish procedures to ensure that the re-verification process is implemented properly and uniformly from State to State.

### **Reasons for Change**

This provision is intended to ensure that workers maintain a satisfactory immigration status while receiving benefits. This section was included for the purposes of the TAA program only and should not be extended to other programs.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

### ***Collection of Data and Reports; Information to Workers (Section 1754 (amending Subchapter C of chapter 2 of title II of the Trade Act of 1974))***

### **Present Law**

Present law does not contain statutory language requiring the collection of data or performance goals and the TAA program has suffered a history of problems with its performance data that has undermined the data's credibility and limited their usefulness. Most of the outcome data reported in a given program year actually reflects participants who left the program up to 5 calendar quarters earlier. In addition, as of FY 2006, the Department of Labor does not consistently report TAA data by State or industry or by services or benefits received.

While the Department of Labor has take some steps aimed at improving performance data, the data remain suspect and fail to capture outcomes for some of the program's participants, and many participants are not included in the final outcomes at all.

### **Explanation of Provision**

The provision would require the Secretary of Labor to implement a system for collecting data on all workers who apply for or receive TAA. The system must include the following data classified by State, industry, and nationwide totals: number of petitions; number of workers covered; average processing time for petitions; a breakdown of certified petitions by the cause of job loss (increased imports etc.); the number of workers receiving benefits under any aspect of TAA (broken down by type of benefit); the average time during which workers receive each type of benefit; the number of workers enrolled in training, classified by type of training; the average duration of training; the number and type of training waiver granted; the number of workers who

complete and do not complete training; data on outcomes, including the sectors in which workers are employed after receiving benefits; and data on rapid response activities.

The provision would also require, by December 15 of each year, the Secretary to provide to the Senate Finance Committee and the House Committee on Ways and Means a report that includes a summary of the information above, information on distributions of training funds under section 236(a)(2), and any recommendations on whether changes to eligibility requirements, benefits, or training funding should be made based on the data collected. Those data must be made available to the public on the Department of Labor's website in a searchable format and must be updated quarterly.

#### **Reasons for Change**

The Conferees believe that valuable information on TAA and its impact is neither being collected nor being made publicly available. This, in turn, inhibits the ability of Congress to perform its oversight responsibilities and, if necessary, to refine and improve the program, its performance, and worker outcomes. Additionally, the Conferees believe that all of the data that the Department of Labor gathers should be made available and posted on its website in a searchable format. This will enhance the accountability of the TAA program and the Department of Labor, not just to Congress, but to the American people as well.

#### **Effective Date**

The provision goes into effect on the date of enactment of this Act.

*Fraud and recovery of overpayments (Section 1755 (amending Section 243(a)(1) of the Trade Act of 1974))*

#### **Present Law**

An overpayment of TAA benefits may be waived if, in accordance with the Secretary's guidelines, the payment was made without fault on the part of such individual, and requiring such repayment would be contrary to "equity and good conscience."

#### **Explanation of Provision**

The provision states that the Secretary shall waive repayment if the overpayment was made without fault on the part of such individual and if repayment "would cause a financial hardship for the individual (or the individual's household, if applicable) when taking into consideration the income and resources reasonably available to the individual or household and other ordinary living expenses of the individual or household."

#### **Reasons for Change**

The Conferees believe that the Department of Labor has adopted a very strict standard for issuing overpayment waivers. In particular, 20 CFR 617.55(a)(2)(ii)(C) defines equity and good conscience to require "extraordinary and lasting financial hardship" that would "result directly"

in the “loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time” and “may be expected to endure for the foreseeable future.” The Conferees understand that no worker has met this strict waiver standard. In including standard statutory waiver language in TAA, there is no indication that Congress intended to make waivers impossible to secure. To the contrary, the Conferees believe that Congress intended that overpaid individuals who are without fault and unable to repay their TAA overpayments should have a reasonable opportunity for waivers of the requirement to return those overpayments. The provision clarifies this intent.

#### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

*Sense of Congress on Application of Trade Adjustment Assistance (Section 1756 (amending Section Chapter 5 of title II of the Trade Act of 1974))*

#### **Present Law**

There is no provision in present law.

#### **Explanation of Provision**

The provision expresses the Sense of Congress that the Secretaries of Labor, Commerce, and Agriculture should apply the provisions of their respective trade adjustment assistance programs with the utmost regard for the interests of workers, firms, communities, and farmers petitioning for benefits.

#### **Reasons for Change**

Courts reviewing determinations by the Department of Labor regarding certification for trade adjustment assistance have stated that the Department is obliged to conduct its investigations with “utmost regard for the interests of the petitioning workers.” *See, e.g., Former Employees of Komatsu Dresser v. United States Secretary of Labor*, 16 C.I.T. 300, 303 (1992) (citations omitted). The courts have explained that such statements flow from the *ex parte* nature of the Department’s certification process (as opposed to a judicial or quasi-judicial proceeding) and the remedial purpose of the trade adjustment assistance program. This section reflects such statements and extends them to the firms, farmers, and communities programs.

#### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

***Consultations in Promulgation of Regulations (Section 1757 (amending Section 248 of the Trade Act of 1974))***

**Present Law**

The Secretary is required to prescribe necessary regulations.

**Explanation of Provision**

This provision requires the Secretary to consult with *the Senate Finance Committee and the House Committee on Ways and Means* 90 days prior to the issuance of a final rule or regulation.

**Reasons for Change**

Requiring that the Secretary consult with the relevant committees 90 days prior to the issuance of a final rule or regulations will help ensure that such rules and regulations reflect Congress' intent.

**Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

**B. Part II - Trade Adjustment Assistance for Firms**

***Trade Adjustment Assistance for Firms (Section 1761-1767 (amending Sections 251, 254, 255, 256, 257, and 258 of the Trade Act of 1974))***

**Present Law**

A firm may file a petition for certification with the Secretary of Commerce. Upon receipt of the petition, the Secretary shall publish a notice in the Federal Register that the petition has been received and is being investigated. The petitioner, or anyone else with a substantial interest, may request a public hearing concerning the petition.

To be certified to receive TAA benefits, a firm must show (1) a "significant" number of workers became or are threatened to become totally or partially separated; (2) sales or production of an article, or both, decreased absolutely, or sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and (3) increased imports of competing articles "contributed importantly" to the decline in sales, production, and/or workforce.

A firm certified under section 251 has two years in which to file an adjustment assistance application, which must include an economic adjustment proposal.

In deciding whether to approve an application, the Secretary of Commerce must determine that the proposal (1) is reasonably calculated "to materially contribute" to the economic adjustment of the firm; (2) gives adequate consideration to the interests of the firm's workers; and (3) demonstrates that the firm will use its own resources for adjustment.

Criminal and civil penalties are applicable for, among other things, making false statements or failing to disclose material facts. However, the penalties do not cover the acts and omissions of customers or others responding to queries made in the course of an investigation of a firm's petition.

The Secretary must make its decisions within 60 days.

### **Explanation of Provision**

The provision makes service sector firms potentially eligible for benefits under the TAA for Firms program. It also expands the look back so that all firms can use the average of one, two, or three years of sales or production data, as opposed to one year, to show that the firm's sales, production, or both, have decreased absolutely or that the firm's sales, production, or both of an article or service that accounts for at least 25 percent of its total production, or sales have decreased absolutely.

In determining eligibility, the provision makes clear that the Secretary may use data from the preceding 36 months to determine an increase in imports, and may determine that increased imports exist if customers accounting for a significant percentage of the decline in a firm's sales or production certify that their purchases of imported articles or services have increased absolutely or relative to the acquisition of such articles or services from suppliers in the United States.

The provision requires the Secretary of Commerce, upon receiving information from the Secretary of Labor that the workers of a firm are TAA-covered, to notify the firm of its potential TAA eligibility.

The provision requires the Secretary of Commerce to provide grants to intermediary organizations to deliver TAA benefits. The provision requires the Secretary to endeavor to align the contracting schedules for all such grants by 2010, and to provide annual grants to the intermediary organizations thereafter. The provision requires the Secretary to develop a methodology to ensure prompt initial distribution of a portion of the funds to each of the intermediary organizations, and to determine how the remaining funds will be allocated and distributed to them. The Secretary must develop the methodology in consultation with the Senate Finance Committee and the House Committee on Ways and Means.

The provision amends the penalties provision in section 259 to cover entities, including customers, providing information during an investigation of a firm's petition. Additionally, the provision requires the Secretary of Commerce to submit an annual report demonstrating the operation, effectiveness, and outcomes of the TAA for Firms program to the Senate Finance Committee and the House Committee on Ways and Means, and to make the report available to the public. The methodology for the distribution of funds to the intermediary

organizations shall include criteria based on the data in the report. The provision creates rules relating to the disclosure of confidential business information included in this annual report.

### **Reasons for Change**

Most service sector firms are currently ineligible for the TAA for Firms program because of a statutory requirement that the workers must have been employed by a firm that produces an "article." In an era when 80 percent of U.S. workers are employed in the service sector, the Conferees believe service sector firms should be eligible for TAA.

The Conferees also note that firms currently have a limited "look back" under existing law, which unfairly restricts their ability to show that increased imports are hurting their businesses.

Because data is not always readily available to demonstrate an increase in imports of articles or services, or to show how such increased imports compete with the articles or services of a particular firm, the Conferees believe that the Secretary should be able to utilize information from the customers of a firm that account for a significant percentage of the decline in the firm's sales or production to verify these customers have increased their imports of the relevant articles or services, either absolutely or relative to their purchases from domestic suppliers.

Since a firm may not know that it could be eligible for TAA benefits, despite the fact that workers at the firm have qualified for the TAA for workers program, the Conferees believe it is important to give these firms notice of their potential eligibility for TAA benefits.

The Conferees are concerned that at present, the Economic Development Administration (EDA) is entering into contracts with intermediary organizations that vary in length. Thus, the contracts begin and end at different times during the year. The provision requires the Secretary of Commerce to provide grants to intermediary organizations to deliver TAA benefits and, to the maximum extent practicable, that contracts with such organizations be for 12 month periods and have the same beginning and end dates. The Conferees will leave it to the discretion of the Secretary to determine the appropriate 12 month contract cycle.

The Conferees also believe that the methodology for distributing funds to intermediary organizations should be based in part on their performance, the number of firms they serve, and the outcomes of firms completing the program. The Secretary of Commerce should consult Congress before finalizing such methodology.

The Conferees understand that some customers provide inaccurate or incomplete information in response to questionnaires posed by the Secretary. The penalty language included in this provision is designed to address this problem.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

### ***Extension of Authorization of Trade Adjustment Assistance for Firms (Section 1764)***

### **Present Law**

The authorization of the TAA for Firms program expired on December 31, 2007. The program is currently authorized at \$16 million per year.

### **Explanation of Provision**

The provision reauthorizes the program through December 31, 2010, and increases its funding to \$50 million per year for fiscal years 2009 and 2010, and prorates such funding for the period beginning October 1, 2010 and ending December 31, 2010. Of that amount, \$350,000 is set aside each year to fund full-time TAA for Firms positions at the Department of Commerce, including a director of the TAA for Firms program.

### **Reasons for Change**

The Conferees believe that the TAA for Firms program has been underfunded, as at least \$15 million in approved projects lack funding. Additionally, the Firms team at the Department of Commerce lacks adequate full-time staff to administer the program.

### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

## **C. Part III - Trade Adjustment Assistance for Communities**

### ***Trade Adjustment Assistance for Communities (Section 1771-1773)***

#### **Present Law**

There is no provision in present law.

#### **Explanation of Provision**

The provision creates a Trade Adjustment Assistance for Communities program that will allow a community to apply for designation as a community affected by trade. A community may receive such designation from the Secretary of Commerce if the community demonstrates that (1) the Secretary of Labor has certified a group of workers in the community as eligible for TAA for Workers benefits, the Secretary of Commerce has certified a firm in the community as eligible for TAA for Firms benefits, or a group of agricultural producers in the community has been certified to receive benefits under the TAA for Farmers and Fishermen program; and (2) the Secretary determines that the community is significantly affected by the threat to, or the loss of, jobs associated with that certification. The Secretary of Commerce must notify the community and the Governor of the State in which the community is located upon making an affirmative determination that the community is affected by trade.

The Secretary of Commerce shall provide technical assistance to a community affected by trade to assist the community to (1) diversify and strengthen its economy; (2) identify impediments to economic development that result from the impact of trade; and (3) develop a community strategic plan to address economic adjustment and workforce dislocation in the community. The Secretary of Commerce shall also identify Federal, State and local resources available to assist the community, and ensure that Federal assistance is delivered in a targeted, integrated manner. The Secretary shall establish an Interagency Community Assistance Working Group to assist in coordinating the Federal response.

A community affected by trade may develop a strategic plan for the community's economic adjustment and submit the plan to the Secretary. The plan should be developed, to the extent possible, with participation from local, county, and State governments, local firms, local workforce investment boards, labor organizations, and educational institutions. The plan should include an analysis of the economic development challenges facing the community and the community's capacity to achieve economic adjustment to these challenges; an assessment of the community's long-term commitment to the plan and the participation of community members; a description of projects to be undertaken by the community; a description of educational opportunities and future employment needs in the community; and an assessment of the funding required to implement the strategic plan.

Of the funds appropriated, the Secretary of Commerce may award up to \$25 million in grants to assist the community in developing a strategic plan.

The provision authorizes \$150 million in discretionary grants to be awarded by the Secretary of Commerce. An eligible community may apply for a grant from the Secretary to implement a project or program included in the community's strategic plan. Grants may not exceed \$5 million. The Federal share of the grant may not exceed 95 percent of the cost of the project and the community's share is an amount not less than 5 percent. Priority shall be given to grant applications submitted by small and medium-sized communities.

Educational institutions may also apply for Community College and Career Training grants from the Secretary of Labor. Grant proposals must include information regarding (1) the manner in which the grant will be used to develop or improve an education or training program suited to workers eligible for the TAA for Workers program; (2) the extent to which the program will meet the needs of the workers in the community; (3) the extent to which the proposal fits into a community's strategic plan or relates to a Sector Partnership Grant received by the community; and (4) any previous experience of the institution in providing programs to workers eligible for TAA. Educational institutions applying for a grant must also reach out to employers in the community to assess current deficiencies in training and the future employment opportunities in the community.

The provision authorizes \$40 million in discretionary grants to be awarded by the Secretary of Labor for the Community College and Career Training Grant program. Priority shall be given to grant applications submitted by eligible institutions that serve communities that the Secretary of Commerce has certified under section 273.

The provision also establishes a Sector Partnership Grant program that allows the Secretary of Labor to award industry or sector partnership grants to facilitate efforts of the partnership to strengthen and revitalize industries. The partnerships shall consist of representatives of an industry sector; local county, or State government; multiple firms in the industry sector; local workforce investment boards established under section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832); local labor organizations, including State labor federations and labor-management initiatives, representing workers in the community; and educational institutions.

The provision authorizes \$40 million in discretionary grants to be awarded by the Secretary of Labor for the Sector Partnership Grant program. The Sector Partnership Grants may be used to help the partnerships identify the skill needs of the targeted industry or sector and any gaps in the available supply of skilled workers in the community impacted by trade; develop strategies for filling the gaps; assist firms, especially small- and medium-sized firms, in the targeted industry or sector increase their productivity and the productivity of their workers; and assist such firms to retain incumbent workers.

### **Reasons for Change**

The TAA for Workers program provides assistance to individual workers who lose their jobs because of trade with foreign countries. The program does not, however, provide broader assistance when the closure or downsizing of a key industry, company, or plant creates severe economic challenges for an entire community impacted by trade. The Conferees believe there is a need for additional programs and incentives to assist such communities. Accordingly, the provision creates a TAA for Communities program to provide a coordinated Federal response to eligible communities by identifying Federal, State and local resources and helping such communities to access available Federal assistance.

The provision does not establish precise criteria for determining when a particular community is impacted by trade. In the view of the Conferees, this determination is better left to the discretion of the Secretary of Commerce, who can evaluate specific facts in specific cases. As a general matter, the Conferees believe the Secretary should review the underlying certification(s) that provide a basis for a community's application and evaluate the potential impact of the job losses (or threat thereof) associated with such certification(s) on the broader community, given the community's overall economic situation. The Conferees intend for the Secretary to focus grants on communities facing the most difficult hardships, to the extent practicable.

The Conferees believe small- and medium-sized communities, and in particular, those in rural areas where the manufacturing sector has historically been a significant employer, would benefit from the technical assistance and grants available through this program. Such communities have been disproportionately impacted by the adverse effects of trade, where some lumber mills, factories and call centers, for instance, have scaled back operations or closed entirely in response to increased trade and globalization.

The Conferees do not intend for the preference for such communities to result in all grants, or the majority of grants, going to such communities to the exclusion of other impacted communities.

**Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act.

***Authorization of Appropriations for Trade Adjustment Assistance for Communities (Section 1772)***

**Present Law**

There is no provision in present law.

**Explanation of Provision**

The provision authorizes \$150,000,000 to the Secretary of Commerce for each of fiscal years 2009 and 2010, and \$37,500,000 for the period beginning October 1, 2010 through December 31, 2010 to carry out the TAA for Communities program.

The provision authorizes \$40,000,000 to the Secretary of Labor for each of fiscal years 2009 and 2010, and \$10,000,000 for the period beginning October 1, 2010 through December 31, 2010 to carry out the Community College and Career Training Grant Program.

The provision authorizes \$40,000,000 to the Secretary of Labor for each of fiscal years 2009 and 2010, and \$10,000,000 for the period beginning October 1, 2010 through December 31, 2010 to carry out the Sector Partnership Grant Program.

**Effective Date**

The provision goes into effect on the date of enactment of this Act.

**D. Part IV - Trade Adjustment Assistance for Farmers**

***Trade Adjustment Assistance for Farmers (Section 1781-1786 (amending sections 291, 292, 293, 296 and 297 of the Trade Act of 1974))***

**Present Law**

A group of agricultural producers or their representative may file a petition for certification with the Secretary of Agriculture. Upon receipt of the petition, the Secretary shall publish a notice in the Federal Register that the petition has been received and is being investigated. The petitioner, or anyone else with a substantial interest, may request a public hearing concerning the petition.

To be certified to receive TAA benefits under this chapter, the group of producers must show (1) that the national average price of the agricultural commodity in the most recent marketing year is less than 80 percent of the national average price for the commodity for the 5 previous marketing

years, and (2) that increased imports of articles like or directly competitive with the commodity contributed importantly to the decline in price.

A group of producers certified under Section 291 has one year to receive TAA benefits, but may apply to be re-certified for a second year of benefits if the group can show a further 20 percent price decline in the national average price of the commodity, and that imports continued to contribute importantly to that decline.

To qualify to receive benefits, individual agricultural producers that are covered by a certified petition must show (1) that the individual producer produced the qualified commodity; and (2) the net income of the producer has decreased. Producers meeting these criteria are eligible to participate in an initial technical assistance course, and to receive cash benefits, not to exceed \$10,000, based on their production and the decline in price for the commodity. Where available, the producer may also attend more intensive technical assistance.

#### **Explanation of Provision**

The provision defines an agricultural commodity producer, for the purpose of the TAA for Farmers program, to include fishermen, as well as farmers.

The provision allows a group of producers to petition the Secretary based on a 15 percent decline in price, value of production, quantity of production, or cash receipts for the commodity, rather than a 20 percent decline in price. The provision shortens the look back period from an average of 5 years to an average of the national average price for the previous three year period. Petitioning producers must also show that imports contributed importantly to the decline in price, production, value of production, or cash receipts.

Once the Secretary certifies a group of commodity producers for TAA, individual producers can qualify for benefits if the producer shows (1) that they are producers of the commodity; and (2) that the price received, quantity of production, or value of production for the commodity has decreased.

Producers deemed eligible to receive benefits by the Secretary are eligible to receive initial technical assistance, and may opt to receive intensive technical assistance, which consists of a series of courses designed for producers of the certified commodity. Upon completion of the series of courses, the producer develops an initial business plan which (1) reflects the skills gained by the producer during the courses; and (2) demonstrates how the producer intends to apply these skills to the producer's farming or fishing operation. Upon approval by the Secretary of the business plan described above, the producer is entitled to receive up to \$4,000 to implement the business plan or to assist in the development of a long-term business plan.

Producers who complete an initial business plan may choose to receive assistance to develop a long-term business adjustment plan. The Secretary must review the plan to ensure that it (1) will contribute to the economic adjustment of the producer; (2) considers the interests of the producer's employees, if any; and (3) demonstrates that the producer has sufficient resources to

implement the plan. If the Secretary approves the plan, the producer is eligible to receive up to \$8,000 to implement the long-term business plan.

Once a petition is certified for the group of producers, qualifying producers are eligible for benefits for a 36-month period. A producer may not receive more than \$12,000 in any 36-month period to develop and implement business plans under the program.

The provision allows fishermen and aquaculture producers who are otherwise eligible to receive TAA benefits to demonstrate increased imports based on imports of farm-raised or wild-caught fish or seafood, or both.

### **Reasons for Change**

The Conferees believe that the 20 percent price decline currently required for a group of producers to be certified under the TAA for Farmers program is too high, and creates an unnecessary barrier for producers to qualify for TAA benefits. Further, producers and the Department of Agriculture were concerned that the current five-year look back period was too long and burdensome for producers.

Additionally, since net farm income is a function of many factors, it has proven very difficult for producers to show the required decline in net income, even when the price for specific commodities had declined significantly. Several disputes regarding whether producers met the net income test were taken to the U.S. Court of International Trade, resulting in significant administrative expense for both the producers and the Department of Agriculture.

The Conferees believe that demonstrating a decline in the production or price of the commodity facing import competition is a better measure of the impact of trade on the individual producer, rather than net income. The provision would allow farmers to demonstrate that either their production decisions or price received for the qualified commodity were affected.

The Conferees also believe that the focus of the TAA for Farmers program should be adjustment assistance, rather than cash benefits. Under the current program, most producers received only initial technical assistance, with little opportunity for additional curricula. The Conferees believe that all producers eligible for TAA benefits should receive more thorough technical assistance and the opportunity for individualized business planning, with financial assistance provided to help the producer implement the business plans.

Further, technical assistance should be provided by the Department of Agriculture through the National Institute on Food and Agriculture ("NIFA"), which may choose to make grants to land grant universities and other outside organizations to assist in the development and delivery of technical assistance. NIFA (formerly the Cooperative State Research, Education, and Extension Service) delivers technical assistance under the current Farmers program, and had successfully developed curricula to respond to producers' adjustment needs.

The Conferees believe that the current one-year limit to obtain TAA benefits unnecessarily limits producers' ability to access technical assistance, particularly when farmers and fishermen must

spend significant portions of each year in the fields or at sea. Extending the eligibility period to 36 months will allow producers to take advantage of all the benefits offered, and will eliminate the need for the current burdensome recertification process.

The Conferees believe that fishermen and aquaculture producers who are otherwise eligible for TAA should be able to demonstrate an increase in imports of like or directly competitive products without regard to whether those imported products were wild-caught or farm-raised. Current law allows these producers to apply for benefits based on imports of farm raised fish and seafood only.

The Conferees expect that the Department of Agriculture will fully fund and operate the TAA for Farmers and Fishermen program for the full duration of each fiscal year for which it is authorized.

#### **Effective Date**

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

#### ***Extension of Authorization and Appropriation for Trade Adjustment Assistance for Farmers (Section 1787 (amending Section 298 of the Trade Act of 1974))***

#### **Present Law**

The authorization and appropriation for the TAA for Farmers program expired on December 31, 2007. The program is currently authorized at \$90 million per year.

#### **Explanation of Provision**

This provision reauthorizes the program through December 30, 2010, and maintains its funding at \$90 million per year for fiscal years 2009 and 2010. The provision further provides funding on a prorated basis for the period beginning October 1, 2010, and ending December 31, 2010.

#### **Effective Date**

The provision goes into effect on the date of enactment of this Act.

#### **E. Part V – General Provision**

#### ***Government Accountability Office Report (Section 1793)***

#### **Present Law**

There is no provision in present law.

**Explanation of Provision**

The provision requires the Comptroller General of the United States to prepare and submit a report to the Senate Finance Committee and the House Committee on Ways and Means on the operation and effectiveness of these amendments to chapters 2, 3, 4, and 6 of the Trade Act no later than September 30, 2012.

**Reasons for Change**

It is critical that GAO review and evaluate the TAA program to assess the changes made by this legislation to ensure that they have improved the effectiveness, operation, and performance of the program.

**Effective Date**

The provision goes into effect on the date of enactment of this Act.