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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 42-95

TO: : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : MARY ANN WYRSCH Mary Ann Wyrsch
Director
Unemployment Insurance Service

SUBJECT : Trade Readjustment Allowance (TRA) and North American Free Trade Agreement (NAFTA)-TRA Qualifying Requirement, 20 CFR 617.11(a)(2)(iv)

1. Purpose. To provide the State Employment Security Agencies (SESAs) with operating guidance on how to interpret and apply the TRA qualifying requirement contained at 20 CFR 617.11(a)(2)(iv) of the Trade Adjustment Assistance (TAA) program regulations for the TAA and NAFTA-TAA programs.

2. References. Trade Act of 1974 (the Act), Pub. L. 93-618, as amended, and 20 CFR Part 617.

3. Background. 20 CFR 617.11 contains the qualifying requirements that all individuals must meet in order to be eligible to receive TRA. One of the qualifying requirements, contained in § 617.11(a)(2)(iv), is that the individual must be entitled to (or would have been entitled to if the individual had applied therefor) unemployment insurance (UI) for a week within the benefit period in which the individual's first [TAA] qualifying separation occurred or which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first [TAA] qualifying separation. This provision implements Section 231(a)(3)(A) of the Act.

Several SESAs have inquired as to the meaning of the term "after such first [TAA] qualifying separation" in § 617.11(a)(2)(iv) in regard to TRA eligibility when the individual immediately obtains other employment after a first separation from adversely affected employment (e.g., there is no week of unemployment between the two jobs), and the individual does not file a UI claim during the applicable certification period. Some SESAs have permitted the TRA claimant to establish a retroactive (or so-called

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"dummy") claim in such cases in order to establish a TRA eligibility period, TRA weekly benefit amount, and basic TRA maximum benefit amount. These SESAs have indicated that such action is necessary in order to protect the individual's rights to TRA in cases when the individual did not establish entitlement to (or would not have been entitled to had the individual applied therefor) UI for a week within the benefit period during the applicable certification period. These SESAs apparently believe that the establishment of UI entitlement during the applicable certification period is a TRA qualifying requirement. These SESAs indicate that such a practice is consistent with the language in Section 231(a)(3)(A) of the Act and Section 617.11(a)(2)(iv) because of the parenthetical phrases contained therein requiring the SESAs to determine the UI eligibility of TRA claimants regardless of whether or not they actually file a UI claim following their first TRA qualifying separation.

4. Guidance. Paragraph (a)(2)(iv) of § 617.11 provides three ways to establish TRA entitlement, all of which hinge on State law regarding when and how UI entitlement is established: (1) the individual had (or would have had) at least one week of UI entitlement established before the first TAA qualifying separation, when the TAA qualifying separation takes place within an already established benefit period; (2) the week of UI entitlement occurs (or would have occurred) within the benefit period established by the first TAA qualifying separation; or (3) the week of UI entitlement occurs (or would have occurred) at sometime after the first qualifying separation, with no qualification or limit as to how long "after the first qualifying separation" the benefit period and week of UI entitlement may be established.

There is no TRA qualifying requirement in the Act or the TAA program regulations that an adversely affected worker establish UI entitlement during the applicable certification period. The phrase "after such first [TAA] qualifying separation" in § 617.11(a)(2)(iv) provides that entitlement to UI may be established after the adversely affected worker's first TAA qualifying separation. **For the purposes of meeting the TRA qualifying requirement at § 617.11(a)(2)(iv)(B), there is no time limit after the first TAA qualifying separation by which the adversely affected worker must establish a benefit period and a week of UI entitlement.**

Therefore, the establishment of a retroactive claim is unnecessary in the circumstances presented in the previous section of this directive, and may, in certain circumstances, actually work to the detriment of the individual. This is especially true for NAFTA-TRA claimants since they must be enrolled in approved training by the latter of the 16th week

after the effective date of the "first benefit period" as defined at § 617.3(r), or the 6th week after the applicable certification is issued, and, in the case of extenuating circumstances, this period may be extended for a period not to exceed 30 days.

SESAs are to keep the following considerations in mind in determining whether to establish a retroactive claim for TRA or NAFTA-TRA eligibility purposes.

a. It is not necessary that the UI claim be established during the applicable certification period in order for the adversely affected worker to meet the eligibility requirement at § 617.11(a)(2)(iv)(B). **Further, the UI claim filed by the adversely affected worker need not be based on a separation from adversely affected employment in order to satisfy the TRA qualifying requirement at § 617.11(a)(2)(iv)(B).**

b. A retroactive claim will only be established when there is no UI claim filed or that could currently be filed by an adversely affected worker after a TAA qualifying separation. However, the SESA may not establish a retroactive claim if the adversely affected worker may, **at the time he/she files an application for TRA,** establish a UI claim. In this case, the worker may either file for UI, which the worker must then exhaust, or, if the worker chooses not to file for UI, the worker must wait until he/she would have exhausted all potential but unclaimed UI before the worker may receive TRA.

c. **Further, the SESA will only establish the retroactive UI claim if the State law permits such action for regular UI claims, and if the claimant would have had one week of UI entitlement during that claim.** The SESA must have a uniform rule when a benefit year may be established, and this uniform rule must be applied equally to UI and TRA (including NAFTA-TRA) claimants.

5. Action Required. SESA Administrators are requested to furnish appropriate staff (including SESA appellate staff) with a copy of this UIPL for their future guidance on TRA and NAFTA-TRA claims.

6. Inquiries. Direct inquiries to the appropriate Regional Office.