

Client Alert

International Trade & Litigation Practice Group

October 21, 2011

After Eight Month Gap, Trade Adjustment Assistance Extended with Key Modifications and Program Reductions

President Obama signed the Trade Adjustment Assistance Extension Act of 2011 (“TAA Extension Act”) into law on October 21, 2011. The new law took effect immediately. Passage of the TAA Extension Act by Congress was accompanied by passage of the implementing legislation for the Free Trade Agreements that the United States negotiated with Columbia, Korea, and Panama.

Originally implemented in the Trade Act of 1974, Trade Adjustment Assistance (TAA) was established to assist workers who lost their jobs as a result of increased imports or shifts in production to foreign countries. Today, several TAA programs are administered independently. TAA benefits now are available for qualifying workers, farmers, communities, and firms, although the TAA Extension Act affects how and when such funds can be distributed. Additional information about TAA programs is available on our website.

For more information, contact:

J. Michael Taylor
+1 202 626 2385
jmtaylor@kslaw.com

Bonnie B. Byers
+1 202 626 5507
bbyers@kslaw.com

Patrick J. Togni
+1 202 626 2958
ptogni@kslaw.com

King & Spalding
Washington, D.C.
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4707
Tel: +1 202 737 0500
Fax: +1 202 626 3737

www.kslaw.com

See:

<http://www.kslaw.com/imageserver/KSPublic/Library/publication/ca021809.pdf>;
<http://www.kslaw.com/imageserver/KSPublic/Library/publication/ca021909b.pdf>.

The TAA Extension Act includes several changes to TAA programs. Key aspects of the TAA Extension Act are summarized below.

Funding of Training, Employment and Case Management Services, Job Search Allowances, and Relocation Allowances

The TAA Extension Act authorizes funding of \$575,000,000 in fiscal years 2012 and 2013, and of \$143,750,000 for the period of October 1, 2013 through December 31, 2013. These funds are available for several programs, including worker training, employment and case management services, job search allowances, and relocation allowances.

Elimination of “Public Agency” Workers as Eligible for TAA

Public agency workers no longer are eligible for adjustment assistance.

Client Alert

International Trade & Litigation Practice Group

Elimination of Certain Worker Training Waivers

Three previously existing waivers of the TAA training requirements for workers were eliminated by the TAA Extension Act. Worker training waivers no longer are available for (1) workers notified that they will be recalled by the firm from which the separation occurred; (2) workers with certain “marketable skills” (e.g., postgraduate degrees or certifications in specialized fields); and (3) workers within two years of eligibility for Social Security or a private pension.

New “Procedures and Criteria” Will Follow Regarding Waiver of Time Limitations for TAA Applications or Enrollment in Training When “Good Cause” Exists

The TAA Extension Act specifies that the Secretary of Labor shall establish procedures and criteria to permit waivers of the time limits under the TAA for Workers program when “good cause” exists for applicants to receive trade readjustment allowances and for enrollment in training. Subsequent agency action should provide additional details regarding how any newly implemented procedures and criteria will affect the existing filing schedules.

Reduction in Trade Readjustment Allowances

The TAA Extension Act reduces certain time periods within which adversely affected workers will be able to receive trade readjustment allowance payments. Before the TAA Extension Act, such payments could extend for up to 78 weeks in the 91-week period following the end of trade readjustment allowances or the beginning of a subsequent training program. The TAA Extension Act now provides trade readjustment allowance payments for up to an additional 65 weeks in a 78-week period.

Limitations on Administrative Expenses and Employment/Case Management Services

The TAA Extension Act limits the amount of funding that states may use for the administration of TAA for Workers program to “not more than 10 percent.” The legislation, however, also mandates that states use “not less than 5 percent for employment and case management services.”

Reallotment of Funds

The TAA Extension Act empowers the Secretary of Labor to “reallot funds that were allotted to any State...and that remain unobligated by the State” for two or three fiscal years after the funds were provided. Reallotted funds under the TAA for Workers program may be used for training, employment/case management services, job search allowances, and relocation allowances in another state.

Reduction in Job Search and Relocation Allowances

The TAA Extension Act reduces workers’ job search and relocation allowance reimbursements from \$1,500 to \$1,250. The TAA Extension Act also specifies a reimbursement cap of “not more than 90 percent” of job search or relocation expenses. The exception to the maximum job search allowance “for necessary expenses incurred by the worker in a job search program approved by the Secretary” of Labor, however, remains in effect. 19 U.S.C. § 2297(c) (2011).

Client Alert

International Trade & Litigation Practice Group

Reduction in Income Cap and Payments for Reemployment Trade Adjustment Assistance Available to Certain Workers Aged 50+

The TAA Extension Act reduces the income cap from \$55,000 to \$50,000 for older workers whose wages are lower at the time of reemployment. To qualify for this particular program, a worker must be (1) at least 50 years of age; (2) earn no more than \$50,000 per year; (3) employed full-time or at least 20 hours per week and enrolled in a training program under 19 U.S.C. § 2296; and (4) not be employed at the firm from which the worker was separated. The TAA Extension Act also reduces payments under this program from a maximum of \$12,000 down to \$10,000.

Additional Provisions Concerning TAA Certification for Workers

The TAA Extension Act addresses timing issues associated with already-filed petitions by workers for whom the Secretary of Labor had not yet made a certification determination as of October 21, 2011. Where a petition to certify a group of workers filed on or after February 13, 2011 was still pending as of October 21, 2011, the TAA Extension Act specifies that the Secretary of Labor shall make that determination “based on the requirements of section 222 of the Trade Act of 1974, as in effect on such date of enactment.” Thus, the new law should apply to such determinations.

The TAA Extension Act also requires the Secretary of Labor to reconsider denials of certifications for petitions filed on or after February 13, 2011, and if the group meets the requirements “as in effect on such date of enactment,” the Secretary of Labor shall “certify the group of workers as eligible to apply for adjustment assistance.”

Workers certified as eligible to apply for adjustment assistance pursuant to the Trade Act of 1974, as amended, will be eligible to receive benefits prescribed by the TAA Extension Act beginning December 20, 2011. A worker already receiving trade adjustment assistance benefits as of December 20, 2011 pursuant to the pre-existing benefit structure may make a one-time election to receive benefits in one of two ways: either (1) under the relevant law as in effect on October 21, 2011 (*i.e.*, as modified by the TAA Extension Act), or (2) under the relevant law “as in effect on February 13, 2011.” Eligible workers must make such an election “not later than the date that is 150 days after such date of enactment,” or by March 19, 2012. The TAA Extension Act states that workers who do not make an election will only be able to receive benefits under the law as in effect on February 13, 2011. Certain past benefits received by a worker will be included in a determination of the maximum benefits for which the worker is eligible.

TAA for Firms Continues with Reduced Funding

TAA for Firms originally was established to help manufacturers that were losing sales and employment as a result of increased imports of similar or competitive goods. Under the program, funds are provided to pay for a portion of projects that the affected firm undertakes to improve its competitive position.

The TAA Extension Act continues the TAA for Firms program and authorizes funding of \$16,000,000 for fiscal years 2012 and 2013, and \$4,000,000 for the period from October 1, 2013 through December 31, 2013. This funding level, however, is significantly lower than the \$50 million annual funding levels that had been implemented in 2009. The TAA Extension Act states that assistance may continue beyond December 31, 2014 under the TAA for Firms program where funds are available and the recipient of the funds “is otherwise eligible to receive such assistance.”

Client Alert

International Trade & Litigation Practice Group

TAA for Communities Now Focuses on Community College and Career Training Grant Program

With regard to the TAA for Communities program, the TAA Extension Act maintains the Community College and Career Training Grant Program, while striking other provisions of the TAA for Communities program. Congress already had appropriated \$500,000,000 for the Community College and Career Training Grant program for each of fiscal years 2011, 2012, 2013, and 2014. With regard to this program, the TAA Extension Act maintains current law, which requires that each state receive at least 0.5 percent of the amount appropriated for each fiscal year. “Eligible institution” carries the same definition as 20 U.S.C. § 1002, but this program only is available “with respect to a program offered by the institution that can be completed in not more than 2 years.” 19 U.S.C. § 2372(a)(2) (2011).

TAA for Farmers

The TAA Extension Act also continues the TAA for Farmers program and authorizes funding of \$90,000,000 for fiscal years 2012 and 2013, and \$22,500,000 for the period from October 1, 2013 through December 31, 2013.

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.