

AGREEMENT BETWEEN

THE STATE OF Ohio

AND THE

SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,

TO CARRY OUT THE PROVISIONS OF

SUBCHAPTERS A, B, C and D OF CHAPTER 2 OF TITLE II OF THE
TRADE ACT OF 1974, AS AMENDED BY THE
TRADE AND GLOBALIZATION ADJUSTMENT ASSISTANCE ACT OF 2009

INTRODUCTION

The Trade Act of 1974 (Pub. L. No. 93-618), as amended (the Act) (codified at 19 U.S.C. §§ 2271 et seq.), created the Trade Adjustment Assistance (TAA) program for workers. The most recent amendment, the Trade and Globalization Adjustment Assistance Act of 2009 (2009 Act), (Pub. L. No. 111-5, Division B, Title I, Subtitle I), reauthorized and implemented reforms to the TAA program. The 2009 Act expanded the program's coverage and required that effective strategies be used to help trade-affected workers obtain new employment. To this end, the intervention strategies used for program benefits and services will be aimed toward rapid, suitable, and long-term reemployment for adversely affected workers. Under the Act, States must increase the focus on early intervention, upfront assessment, employment and case management services, and training for workers covered under TAA certifications; maintain fiscal integrity; and promote performance accountability.

TERMS OF AGREEMENT

The Secretary of Labor, United States Department of Labor (the Secretary) and the State/Commonwealth of Ohio (the State), in order to carry out the worker adjustment assistance provisions of Subchapters A, B, C and D of Chapter 2 of the Act, hereby agree as follows:

I. This Agreement is entered into under Section 239 of the Act and will take effect upon the signatures of both parties. This Agreement supersedes all prior Agreements (and any modifications thereof) between the Secretary and the State.

II. A. The Department of Job and Family Services,
(Name of Cooperating State Agency Designated by the Governor)

in coordination with the State agency (as defined under Section 247(9) – (10) of the Act to mean the agency that administers the State unemployment compensation law), and such other agency or agencies of the State as the Governor of the State may designate to cooperate with such Cooperating State Agency (CSA), will act as the agent of the United States in receiving applications from, and providing benefits and services to, workers for TAA. These benefits and services include training, the Alternative TAA Program for Older Workers (ATAA Program), the Reemployment Trade Adjustment Assistance (RTAA) Program, job search and relocation allowances, subsistence payments, transportation payments, and Trade Readjustment Allowances (TRA). The State will make available the employment and case management services required under Section 235 of the Act to eligible adversely affected workers and adversely

affected incumbent workers (as defined in Section 247(2) and (19) of the Act) for whom a certification has been issued under Chapter 2 of Title II of the Act.

The functions and duties undertaken under this Agreement will be performed in accordance with the Act and the regulations and operating instructions issued thereunder by the United States Department of Labor (the Department). The State will perform such duties and functions in accordance with the Department's administrative requirements for grants and cooperative agreements to State and local governments at 29 C.F.R. parts 31, 32, 37, 93, 96, 97, 98, and 99.

The State agrees that staff employed by the State unemployment compensation (UC) or employment service (ES) agency who perform functions under both the TAA program and the UC and/or ES programs will be merit-staffed. With the TAA expansion under the 2009 Act, the Department will begin rulemaking on the use of merit standards in State administration of the TAA program. In the interim, the Department urges the State to apply state merit standards to the selection and employment of all new staff funded by TAA.

B. The State agrees that the TAA program is a required partner in the comprehensive One-Stop system established under the Workforce Investment Act of 1998 (WIA) (29 U.S.C. §§ 2801 et seq.) (see WIA Section 121(b)(1)(B)(viii), 29 U.S.C. § 2841(b)(1)(B)(viii)). The State will ensure integration of the TAA program into its One-Stop system and will comply with all applicable laws, regulations, and policy guidance issued under the WIA. The State will use One-Stop Career Centers as the main point of participant intake and delivery of benefits and services.

C. The State will ensure that rapid response activities and appropriate core and intensive services (as described in Section 134 of the WIA (19 U.S.C. § 2864)) are made available to workers for whom a petition for trade adjustment assistance has been filed.

D. The State agrees that the TAA program will be the primary source of assistance to adversely affected workers and adversely affected incumbent workers covered by a certification. The State also agrees that to the extent adversely affected workers and adversely affected incumbent workers covered by a certification enrolled in the TAA program require assistance or services not authorized under the TAA program or assistance or services for which TAA program funds are unavailable or insufficient (including the employment and case management services required under Section 235 of the Act); such assistance will be made available through the One-Stop system under Title I of the WIA to the extent that Local Workforce Investment Boards and/or One-Stop operators can provide or arrange for such assistance in accordance with the terms of the local memoranda of understanding (MOU) established under WIA Section 121(c) (19 U.S.C. § 2841(c)). Additionally, where WIA Title I funds are used for training, the training must be approvable under Section 236(a) of the Act and the regulations and operating instructions of the Department. The State will otherwise cooperate with the Department, other State and federal agencies, and with service providers under WIA in providing payments and services in accordance with this Agreement.

E. In carrying out the terms of this Agreement, the State must: (1) Perform outreach, intake, and orientation for adversely affected workers and adversely affected

incumbent workers covered by a certification to advise such workers as soon as practical of the TAA program benefits and services and the procedures and deadlines for applying for such benefits and services. The State's responsibilities include: (1) facilitating the early filing of petitions for any workers who reasonably may be or become eligible for benefits under the Act, including helping petitioners file petitions and filing petitions on behalf of eligible workers under Section 231 of the Act; (2) as soon as practical, identifying the adversely affected workers and adversely affected incumbent workers covered by a certification, informing them of suitable training opportunities, reviewing such opportunities with the workers, providing additional information including time limits for applying for benefits and services, and advising and assisting workers as is required by the Act and the regulations and operating instructions issued thereunder by the Department; (3) advising each adversely affected incumbent worker covered by a certification of the availability of the pre-layoff training benefit; and (4) encouraging each adversely affected worker covered by a certification to apply for training under the Act before (if possible) the worker becomes entitled to receive TRA, but in no event later than the enrollment deadline.

III. This Agreement authorizes the State to issue waivers of the training requirements in accordance with Section 231(c) of the Act. The State will provide to the Secretary reports on waivers as required by the Act and consistent with the manner prescribed in guidance documents and reporting instructions. In addition, upon the request of the Secretary, or his or her designee, the State will provide a copy of any or all waivers issued, together with a statement of reasons for each such waiver, and a copy of any or

all revocations issued, together with a statement of reasons for each such revocation.

The State will review each waiver issued under subparagraphs (A), (B), (D), (E), and (F) of paragraph (1) of Section 231(c) of the Act three months after initial issuance and once every month thereafter.

IV. For adversely affected workers covered under TAA certifications resulting from petitions filed before May 18, 2009, the State will follow the eligibility criteria and procedures for the TAA program and ATAA program under Subchapters A and B of Chapter 2 of Title II of the Trade Act of 1974, as amended prior to the enactment of the 2009 Act.

The State will:

1. Provide benefits and services to TAA and ATAA eligible individuals in accordance with the Trade Act of 1974, as amended prior to the enactment of the 2009 Act, and implementing regulations at 20 C.F.R. part 617 and 29 C.F.R. part 90 to the extent they are consistent with Subchapters A and B of Chapter 2 of Title II of the Trade Act of 1974, as amended prior to the enactment of the 2009 Act.
2. Comply with Training and Employment Guidance Letter (TEGL) 11-02, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, and Changes, 1, 2, and 3; and TEGL 2-03, Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002, and Change 1; and other such program letters issued by the Department

applicable to the TAA benefits and assistance for adversely affected workers covered under TAA certifications resulting from petitions filed before May 18, 2009.

V. For adversely affected workers and adversely affected incumbent workers covered under TAA certifications resulting from petitions filed on or after May 18, 2009, the State agrees to follow the eligibility criteria and procedures for the TAA program under Subchapters A, B and C of Chapter 2 of Title II of the Act, the operating instructions for implementing the amendments to the Trade Act of 1974 enacted by the 2009 Act, and any future Department program letters and implementing regulations.

VI. The State will verify the satisfactory immigration status of workers applying for TAA benefits who are not United States citizens or nationals through the immigration status verification system described in Section 1137(d) of the Social Security Act (42 U.S.C. § 1320b-7(d)). If this verification was done in connection with a claim for unemployment compensation, the State need not do so again for TAA. However, if, after initial verification, either in connection with an unemployment compensation or TAA claim, the documentation of a worker will expire during the period of potential TAA eligibility, the State will, in connection with any further benefits, re-verify the worker's immigration status according to Section 1137(d).

VII. The State will assist in the administration of the health coverage tax credit program under Sections 35, 7527, and 6050T of the Internal Revenue Code of 1986 (26 U.S.C. §§ 35, 7527, 6050T) and Section 2745 of the Public Health Service Act (42 U.S.C. § 300gg-45), in accordance with Department program letters and implementing regulations.

VIII. When a single CSA or multiple CSAs administer the TAA program benefits and services under Sections 231 through 238 and Section 246 of the Act, and the programs under Title I of the WIA, that CSA (or those CSAs) will take such action as may be necessary to ensure the coordinated delivery of services and payments under these programs to adversely affected workers. When the programs under this Agreement and WIA are administered by different CSAs, in whole or in part, the CSA(s) administering TAA benefits and services under this Agreement and the CSA administering programs under Title I of the WIA must enter into an interagency agreement to ensure coordination of, and avoid duplication of, activities as required by Section 112(b)(8) of the WIA (29 U.S.C. § 2822(b)(8)).

IX. A determination by a CSA with respect to an individual's entitlement to any TAA program benefits or services will be subject to review in the same manner and to the same extent as determinations with respect to unemployment compensation under the State unemployment compensation law, and only in that manner and to that extent.

X. The State or the State agency will not deny or reduce unemployment compensation otherwise payable to an adversely affected worker under any State or federal unemployment compensation law for any week by reason of any right to a payment of any TAA program benefit. If, with respect to any week of unemployment, any reduction or denial of unemployment compensation was made under the unemployment compensation law of the State on account of any TAA program benefit paid to an individual, the State (including the State agency) agrees to pay the individual the full amount of the reduction or denial, except for additional compensation not reimbursed

by any federal funds as allowed under Section 231(a)(3)(B) of the Act. The payment of TRA in accordance with an adversely affected worker's election under Section 232(d) of the Act is not a denial or reduction of an adversely affected worker's unemployment compensation, provided that the State or State agency does not treat the election as precluding the payment of unemployment compensation for weeks of unemployment for which the adversely affected worker is otherwise eligible.

XI. Allowable costs, including the costs of performing services for another State under the Act, shall be determined in accordance with the Office of Management and Budget Circular A-87 (Revised) (2 C.F.R. part 225).

XII. The State will comply with the provisions of the State's Trade Adjustment Assistance Program Annual Cooperative Financial Agreement and Unemployment Insurance (UI) Program Annual Funding Agreement (Financial Agreements) and accompanying certifications and assurances. All funds allocated to the State under the Financial Agreements will be used solely for the purposes for which they are allocated to the State. Any such funds that are not needed for the purpose(s) for which they were allocated will be returned to the United States Treasury as soon as reasonably possible.

XIII. The State will take such action as is reasonably necessary to recover for the account of the United States all amounts paid out as program benefits or services which were erroneously paid to ineligible claimants or others, and to restore any losses or misapplication of funds allocated to the State for Trade Act program benefits or services.

XIV. The State will, by and through the CSA referred to in Article II. A. of this Agreement, maintain such records, in accordance with 29 C.F.R. section 97.42 and any successor provisions, pertaining to the administration of the Act as the Department requires, including, but not limited to, the identification of workers determined eligible for TRA and other program services and/or benefits, and the services and benefits provided to or on behalf of such individuals. The State will make such records available for inspection, examination, and audit by such federal officials or employees as the Department may designate or as may be required by law.

A. The State will, in a timely and accurate manner, report to the Department all data necessary to meet the requirements of the Act, including the Trade Act Participant Report, which details participant outcome data required in Training and Employment Guidance Letter No. 11-00 (OMB Control No. 1205-0392), and any subsequent guidance.

B. The State agrees to provide, in such forms as the Secretary requires, the description and information described in Section 112(b)(8) – (14) of the WIA (29 U.S.C. § 2822(b)(8), (14)), OMB Control Numbers 1205-0398 and 1205-0407, and a description of the State's rapid response activities in accordance with Section 221(a)(2)(A) of the Act.

C. The State will provide on a quarterly basis, in such form and according to such procedures as the Department requires to ensure that the data provided are valid and reliable, comprehensive performance accountability data, including the core indicators of performance (as defined in Section 239(j)(2)(A) of the Act), additional indicators of

performance as agreed upon by the Secretary and the State or a CSA (as provided by Section 239(j)(2)(B) of the Act), and a description of efforts made to improve outcomes for workers under the TAA Program.

XV. The State will, as directed by the Department, implement effective control measures and effectively oversee the operation and administration of the TAA Program, including by means of monitoring the operation of control measures to improve the accuracy, verifiability and timeliness of data being collected and reported. In particular, the State will adopt a formal monitoring program that reviews a sample of worker files to ensure effective and efficient operation and administration of the program. Reports generated by this monitoring activity will be available for audit by the Department.

XVI. The State will keep confidential any information it receives about each claimant in the course of fulfilling its obligations under this Agreement to the full extent required under all applicable State and federal laws. The State will keep confidential any confidential business information, as defined at 29 C.F.R. section 90.33, and any successor provisions it obtains or receives in the course of fulfilling its obligations under this Agreement, and shall not disclose such information to any person, organization, or other entity except as authorized by applicable State and federal laws.

XVII. The CSA referred to in Article II. A. of this Agreement will make available to any individual or organization a copy of this Agreement for inspection and copying. Copies of this Agreement may be furnished on request to any individual or organization upon

payment of the same charges, if any, as apply to furnishing copies of other records of the CSA(s).

XVIII. If the State, or any CSA, has not fulfilled the commitments under this Agreement, and the Secretary has made a determination to that effect, Section 3302(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3302(c)(3)), shall be implemented, and the total credits otherwise allowable to taxpayers subject to the unemployment compensation law of the State shall be reduced as provided in Section 3302(c)(3). A State, or a State agency, will be notified and afforded an opportunity for a hearing before such a determination is made. Pending the making of a determination as provided herein, the Secretary may, when the Secretary determines that the seriousness of the situation warrants the action, suspend the Agreement by written notice to the State, and make such arrangements as the Secretary deems necessary or appropriate to assure the continuing administration of the Act in the State in accordance with the Act and the regulations and operating instructions issued thereunder.

XIX. This Agreement will remain in effect until it is modified or terminated. A written request by the Secretary for a modification or, except as provided in paragraph XVIII, a termination, will be submitted to the State at least thirty (30) days before such action will take effect. A written request by the State for a modification or termination will be submitted to the Secretary at least thirty (30) days before such action may take effect. The Secretary and the State must agree on all modifications before any such modifications will take effect. If this Agreement is terminated by the State, all matters concerning the administration of the Act and this Agreement in the State shall be

concluded as soon thereafter as possible. On or before the date of termination, the State shall turn over to the Department all pending applications for TAA program benefits and/or services and all State-maintained TAA records and will otherwise cooperate with the Secretary to ensure the continued administration of the TAA program.

STATE OF Ohio :

U.S. DEPARTMENT OF LABOR:

By: Fed Strickland
Governor (or duly authorized representative)

By: Hilda F. Solis
Secretary of Labor

DATED: May 14, 2009

DATED: April 30, 2009

CERTIFICATION
(If signed by other than Governor)

_____, has the
(Name and Title)
authority under the Constitution and laws of this State to sign this foregoing Agreement
on behalf of the State of _____.

Signature: _____

Title: _____

Date: _____, 20____