The Honorable «Governor»
Governor of «State»
«Address»
«Address2»
«City_State_ZIP»

Dear Governor «Governor_Last_Name»:

The Trade Act of 2002, Public Law No. 107-210 ("Act"), includes important provisions to assist certain workers who lose their jobs due to the effects of international trade. In addition, it provides for certain beneficiaries of the Pension Benefit Guaranty Corporation in paying for qualified health insurance. The primary mechanism for assistance is a federal tax credit equal to 65 percent of the amount paid by eligible individuals for such health insurance. An additional interim mechanism to assist in paying for qualified health insurance is through National Emergency Grants (NEGs). We estimate these provisions could help over 500,000 Americans each year – many of whom may reside in your state – continue or obtain health insurance. To make the most of this opportunity, however, we need your assistance.

Under the law, the States play an important role in providing health insurance coverage options and assisting individuals to enroll. The Department of the Treasury administers the federal tax credit under the Act. NEG assistance, which is administered by the Department of Labor, is available without any cost to the State. Certain health insurance coverage options, such as continuation health coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 (commonly known as COBRA coverage), are automatically available to all eligible individuals. Other options specified in the law are available only if the State elects them and certain conditions are met. Enclosed is more detailed guidance on how States may elect coverage options for eligible individuals under the Trade Act. Please note that funds are available to States through additional NEGs administered by the Department of Labor for start-up and administrative costs relating to the tax credit program. The Department of Health and Human Services will assist States in interpreting this guidance with respect to qualified health insurance.

We strongly encourage your state to take advantage of the benefits of these programs. We also encourage your state to elect options to increase the opportunities for eligible individuals to have health insurance.

We look forward to working with you. If you or your staff have any questions, please contact Keith Taylor, Director of the Health Coverage Tax Credit Program, at 202-622-1509.

Sincerely,

John W. Snow Secretary of the Treasury	Elaine L. Chao Secretary of Labor	Tommy G. Thompson Secretary of Health and Human Services

Guidance for Elections of Qualified Health Insurance
Under the Trade Act of 2002

I. Purpose and Background

On August 6, 2002, President Bush signed into law the Trade Act of 2002 ("Act"), Public Law 107-210.[1] Title II of the Act contains provisions that provide assistance to certain individuals participating in the Trade Adjustment Assistance program (TAA) or receiving a payment from the Pension Benefit Guaranty Corporation (PBGC), to enable them to purchase health insurance. (A copy of Title II of the Act is available at http://www.doleta.gov/tradeact/2002act_index.asp). The primary mechanism for such assistance is a federal tax credit that is equal to 65 percent of the amount paid by the eligible individual for coverage for the individual and qualifying family members under qualified health insurance. The end of the year tax credit became available on December 1, 2002 for individuals who claim the credit on their subsequent income tax return. By August 1, 2003, the credit will also be available in advance on a monthly basis as the premium is paid. The government's share (65 percent of the premium amount paid by the individual) will be combined with the eligible individual's payment of the 35 percent and paid on a monthly basis, in general to the qualified health plan in which the individual has enrolled. The Department of the Treasury (Treasury) is responsible for implementing this advance credit under its Health Coverage Tax Credit program (HCTC).

The Act also authorizes National Emergency Grants (NEGs) for which States may apply under the Workforce Investment Act of 1998. One type of NEG is available to assist eligible TAA and PBGC recipients, on an interim basis, in paying up to 65 percent of the premiums for qualified health insurance (equivalent to the Federal share under the tax credit) until the advance tax credit mechanism becomes available in August. The second type of NEG is available to provide resources to assist the States with start-up and administrative costs relating to the tax credit. The Department of Labor (DOL) is responsible for administering both types of NEGs (see Section V below).

The Administration estimates that as many as 260,000 people nationwide may be able to claim this credit next year. When combined with qualifying dependents, this means more than a half million people could benefit from the credit. (Attachment A provides estimates of TAA and PBGC recipients eligible in each State).

The States play a critical role in the administration of this assistance. Particularly important to the success of this assistance are the States' efforts toward ensuring the availability of coverage for which the assistance can be used, making eligible individuals aware of the program, and increasing the options available to them. The purpose of this guidance is to inform the States of the program and to explain their role in making health insurance options available.

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[1] The law is the Trade Act of 2002. Division A of the Trade Act contains its own title: The Trade Adjustment Assistance Reform Act of 2002. Title II of the Act (Division A) contains the health coverage assistance provisions.

II. Who Is Eligible

There are two basic categories of individuals who may be eligible for the tax credit and NEG assistance under the Act: (1) certain Trade Adjustment Assistance (TAA) recipients as described below, and (2) people who have attained age 55 but who are not on Medicare who receive pension payments from the Pension Benefit Guaranty Corporation (PBGC).

A. TAA Recipients:

An eligible TAA recipient is defined as any individual who is receiving a trade readjustment allowance under the Trade Act of 1974 at any time during a month, or individuals who would be eligible for such an allowance except that they have not exhausted their regular unemployment insurance benefits. In addition, individuals receiving benefits under the alternative trade adjustment assistance program, established under section 246 of the Trade Act of 1974 (which commences on August 1, 2003) also will be eligible for assistance. All TAA recipients remain eligible for the tax credit for one month after the end of the month that their eligibility for TAA status ceases.

B. PBGC Pension Recipients:

A person who is receiving a benefit payment from PBGC and who has attained age 55 (but who is not eligible for Medicare) on the first of the month may be eligible for the tax credit.

C. Other factors:

An eligible individual is not entitled to the tax credit for any month if, on the first day of the month, the individual is covered by "other specified coverage".

The tax credit can be used to purchase qualified health insurance that also covers an eligible individual's spouse or dependent (i.e., anyone who qualifies as a dependent under the Internal Revenue Code), provided the spouse or dependent does not have "other specified coverage".

"Other specified coverage" includes:

- insurance coverage through the spouse's employer, and the spouse's employer contributes at least 50 percent of the cost of coverage for the spouse, the eligible individual and dependents (or the spouse receives coverage in lieu of an employer's cash or other benefits under a cafeteria plan);
- coverage under Medicare Part A or enrolled under Part B;
- a State's Medicaid program;
- a State's SCHIP program;
- a plan in the Federal Employees Health Benefit program; or
- a Defense Department health plan.

An individual who is imprisoned cannot be an eligible individual.

Individuals with questions about their TAA status or benefits should contact their State workforce agency. PBGC beneficiaries with questions about pension benefits from the PBGC should call 1-800-400-7242. For questions concerning eligibility for the Health Coverage Tax Credit, please contact the HCTC customer contact center at 1-866-628-HCTC. The TDD/TYY number is 1-866-626-HCTC.

III. Qualified Health Insurance

A. Types of Plans

The law identifies ten categories of health insurance that may be "qualified" as coverage for purposes of the tax credit and NEG assistance. The coverage must be for comprehensive health coverage.[2]

The ten categories are:

1. COBRA: any continuation coverage that the eligible individual has under the federal Consolidated Omnibus Budget and Reconciliation Act of 1985.
2. State COBRA or continuation coverage: any State-based continuation coverage in a group plan that is obtained under a State law that requires such coverage.
3. High risk pool: as defined in the Public Health Service Act section 2744(c)(2), coverage that is offered through a State high risk pool that is otherwise open to "HIPAA eligibles" without imposing a preexisting condition exclusion, and is consistent with the NAIC model act entitled "Health Plan for Uninsurables" that was in effect in August, 1996. (Attachment B is a list of the State high risk pools that are qualified based on the information currently available to the Department of Health and Human Services.[3])
4. State employees' health plan: coverage under a State employees' health insurance program.
5. A State-based health insurance program that is comparable to the health insurance program offered to State employees.
6. A State arrangement: a State can enter into an arrangement with an issuer of health insurance coverage (including individual insurance) to offer coverage to eligible individuals. It can also enter into an arrangement with an administrator or an employer to offer coverage to the individual, or with a group health plan (including a multiemployer plan).
7. Purchasing pool: a State arrangement for coverage that is provided through a private sector purchasing pool.
8. Other State plans: coverage that is provided through a State operated health plan that does not receive any federal financial assistance.

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[2] Examples of types of plans that are not eligible for the credit or NEG assistance are limited coverage plans such as dental or vision care; fixed dollar indemnity coverage; specific disease insurance; workers' compensation; health coverage under an automobile insurance policy; liability insurance; or coverage for on-site medical clinics.

[3] The Act also provides a grant program that provides up to $1 million to a State to establish a qualified high risk pool in FY 2003 or 2004, and a separate two year grant program that will provide a grant up to 50 percent of a qualified high risk pool's operating losses, up to a national total of $40 million each year. The seed grant announcement can be found at www.cms.hhs.gov/riskpool. The grant announcement for the operating losses will be forthcoming.

9. Spouse's coverage: coverage under a group health plan that is available through the employment of the eligible individual's spouse, if the spouse's employer contributes less than 50 percent of the total cost of coverage for the spouse, the eligible recipient, and any dependents. (There is a distinction for Alternative TAA recipients—those aged 50 or older who are receiving income support. If these people are eligible for spousal coverage where the employer pays 50 percent or more, they are considered to have other specified coverage, even if they are not actually covered by the spouse's plan.)
10. Individual health insurance: coverage under individual health insurance if the eligible individual was covered under the insurance during the entire 30 day period that ended on the date that such individual became separated from the employment that qualifies the person as a TAA or PBGC recipient.

B. State Election

Coverage options 1, 9 and 10 above are automatically considered to meet the definition of "qualified health insurance" for all eligible individuals, without further state action. Options 2 through 8 only meet the definition if the State elects to have one or more of these options considered to be qualified health insurance. For individuals who have had at least three months of creditable coverage prior to seeking enrollment in any of these Options 2 through 8, the insurance will only be considered qualified health insurance if it meets the following four criteria:

1. Guaranteed issue: Qualifying individuals must be guaranteed enrollment regardless of their medical status and must be permitted to remain enrolled so long as they pay the premium.
2. No pre-existing condition restrictions: No pre-existing condition restriction may be imposed on qualifying individuals.
3. Nondiscriminatory premium: The premium charged for a qualifying individual may not be greater than the premium for a similarly situated person who is not receiving the credit.
4. Benefits are the same (or substantially the same) under coverage provided to similarly situated individuals who are not qualifying individuals.

Generally, periods of coverage prior to a break in coverage of 63 days or more do not count in determining whether an individual has three months of coverage. However, individuals who do not have at least three months of creditable coverage[4] may still use the tax credit or NEG

[4] "Creditable coverage" is defined in section 9801(c) of the Internal Revenue Code, and includes most kinds of health coverage. (The identical definition also appears in section 2701(c) of the Public Health Service Act and section 701(c) of the Employee Retirement Income Security Act (ERISA). Periods of creditable coverage prior to a "significant break in coverage" do not count in determining whether an individual has three months of creditable coverage for purposes of the tax credit or NEG assistance. This also means that there can be a break in coverage between the loss of health plan coverage and applying for a new plan elected by the State. A significant break in coverage under federal law is a break in coverage of at least 63 consecutive days (days in a waiting period in which an individual has no other coverage are not considered creditable coverage nor are they taken into account when determining if there is a significant break in coverage). However, the length of time that passes before a significant break in coverage is reached may be longer under State law that applies to HMOs and health insurance carriers.

assistance in connection with enrollment in health insurance that the State has elected to have treated as qualified.

States may find that the four requirements can be met most easily by selecting as the State option(s) the coverage arrangements that now qualify as the State's alternative mechanism under section 2744 of the Public Health Service Act. These are typically either a high risk pool (#3) or individual coverage (#6).

The Department of Health and Human Services will assist States in interpreting this guidance with respect to qualified health insurance. Questions should be directed to:

Stephen Finan
Office of the Assistant Secretary for
Planning and Evaluation
Dept. of Health and Human Services
Room 442E
200 Independence Ave, SW
Washington, DC 20201
Telephone: 202.690.7387
E-mail: Stephen.Finan@hhs.gov

IV. State Elections

A. Elections Letter

Options 1, 9 and 10 are automatically considered to meet the definition of "qualified health insurance" for all eligible individuals without any further State action. However, under the law, the remaining options are available only if the State elects to provide one or more of them.

To facilitate implementation of the law, we request that the Governor, or the Governor's representative, send a letter indicating which options (2-8, above) the State is electing to make available to eligible recipients under the tax credit. (Note: DOL expects the coverage options for the interim assistance NEG to be identified in the application for the grant and will coordinate the review of these options with HHS). Please send the letter to:

Keith V. Taylor
Director, Health Coverage Tax Credit Program
1111 Constitution Ave, N.W.
W:HCTC/CNN 750
Washington, D.C. 20224

B. Information Requested

The letter should:

1. Identify the State official responsible for implementing this decision, including address and telephone number.
2. State the option(s) chosen by the State (of options 2-8).
3. Provide the name, policy form number or other unique identifier for each qualifying plan under each option. Also, provide a name and contact number for the plan administrator or insurance carrier official who can provide additional information, if necessary.
4. Certify that the four requirements (III. B. above) are met for each plan under each option.
5. Certify that the benefits made available to tax credit recipients are the same or substantially the same as those in the plans who do not receive the tax credit.

C. Public Information

To assist eligible individuals, the State should take steps to publicize the options available to eligible individuals in their State. Such steps can include the listing of qualified plans on a website, providing lists at State TAA offices, unemployment offices, and other locations where eligible recipients may obtain information.

V. National Emergency Grant Assistance

As noted above, the Trade Adjustment Assistance Reform Act of 2002 authorizes two new NEG mechanisms relating to the provision of health insurance coverage assistance that are to be administered by the Department of Labor. The Department of Labor and the Department of Health and Human Services will work closely together to facilitate the provision of technical assistance to the States regarding these NEGs.

A. System Development Grants. These grants are intended to help States cover certain start-up and administrative costs. Guidance for applying for these grant funds have been issued in Training and Employment Guidance Letter (TEGL) 10-02. These grants may be used to establish and implement systems for:

--eligibility verification;
--certification of State-based health insurance coverage;
--notification to eligible individuals of available qualified health insurance options;
--providing assistance to individuals in enrolling in qualified health insurance;
--processing of certificates confirming eligibility of individuals for the advance payment of the tax credit;
--developing and installing necessary data management systems; and
--other expenses, as determined appropriate by the Secretary of Labor, including the start-up and ongoing administration of State-elected health-insurance coverage options.

B. Health Insurance Interim Assistance Grants. These grants are available to States to assist eligible TAA and PBGC recipients in paying up to 65 percent of the monthly premiums for qualified health insurance coverage until the advance payment mechanism for the tax credit becomes available. The grants may also be used to provide additional support services to eligible individuals. Draft guidance was published in the Federal Register on December 4, 2002 (67 FR 72222-72234), and guidance for applying for Health Insurance Interim Assistance Grants were issued through TEGL 20-02.

C. Contact. For further assistance regarding these NEGs please contact:

Shirley M. Smith
Office of National Response
U.S. Department of Labor
Employment and Training Administration
Room N5420
200 Constitution Ave., NW
Washington DC 20210
202-693-3501

End Note: This document was amended on August 8,2003.

Attachment A: Estimated Eligibles by State 2002 Level Under The Trade Adjustment Act of 2002

	Estimated	Population[5]	
	Total	TAA	PBGC
Alabama	8,100	5,500	2,600
Alaska	200	100	100
Arizona	2,500	1,000	1,500
Arkansas	3,000	1,700	1,300
California	14,300	7,100	7,200
Colorado	1,800	500	1,300
Connecticut	2,600	1,100	1,500
Delaware	200	0	200
District of Columbia	100	0	100
Florida	13,000	1,700	11,300
Georgia	10,700	4,700	6,000
Hawaii	600	0	600
Idaho	1,100	800	300
Illinois	11,900	4,800	7,100
Indiana	9,700	5,100	4,600
Iowa	1,900	600	1,300
Kansas	3,600	2,600	1,000
Kentucky	4,200	2,900	1,300
Louisiana	1,400	400	1,000
Maine	1,600	1,300	300
Maryland	1,200	100	1,100
Massachusetts	3,900	2,000	1,900
Michigan	7,500	4,000	3,500
Minnesota	4,900	2,800	2,100
Mississippi	3,100	2,300	800
Missouri	6,500	1,300	5,200
Montana	100	0	100
Nebraska	500	200	300
Nevada	900	200	700
New Hampshire	1,300	800	500
New Jersey	5,900	1,200	4,700
New Mexico	600	300	300
New York	11,900	4,200	7,700
North Carolina	14,600	9,900	4,700

[5] These estimates are intended to provide states with rough guidance as to the size of the eligible population at 2002 levels. States listed as having zero TAA eligibles may have a few participants. Actual enrollment will depend on many factors, including the size of the population currently eligible for TAA and PBGC benefits, the number and type of health plans available to the eligible population, and take-up rates. Moreover, in some states the number of workers eligible for Trade Adjustment Assistance varies significantly from year to year.

	Estimated	Population	
	Total	TAA	PBGC
North Dakota	100	0	100
Ohio	19,600	5,200	14,400
Oklahoma	3,400	2,400	1,000
Oregon	5,100	4,500	600
Pennsylvania	20,000	8,400	11,600
Rhode Island	500	200	300
South Carolina	5,200	3,400	1,800
South Dakota	200	100	100
Tennessee	9,000	4,700	4,300
Texas	15,500	10,700	4,800
Utah	600	300	300
Vermont	500	300	200
Virginia	6,700	3,800	2,900
Washington	11,600	10,300	1,300
West Virginia	1,700	700	1000
Wisconsin	5,300	3,300	2,00
Wyoming	200	100	100

Source: TAA data are based on information from the Employment Training Administration in the U.S. Department of Labor. PBGC estimates are based on data provided by the Pension Benefit Guaranty Corporation.

Attachment B: Currently "Qualified" State High Risk Pools[6]

Alabama
Alaska
Arkansas
Colorado
Connecticut
Idaho
Illinois
Indiana
Iowa
Idaho
Kansas
Kentucky
Louisiana
Minnesota
Mississippi
Montana
Nebraska
New Hampshire
North Dakota
Oklahoma
South Carolina
Texas
Wisconsin
Wyoming

Note: To be "qualified," a high risk pool must be open to "HIPAA eligibles" (as defined in the Public Health Service Act section 2744(c)(2)) and be consistent in its premium rates and benefits with the NAIC model act entitled "Health Plan for Uninsurables" that was in effect in August, 1996.

[6] These States' risk pools meet the criteria set forth in section 2744(c)(2) of the Public Health Services Act. In addition, to be qualified health insurance under the credit or NEG assistance, the risk pools must meet the four conditions in III.B. above.