

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
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TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
AFFILIATE AMERICAN JOB CENTER MANAGERS
COMPREHENSIVE AMERICAN JOB CENTER MANAGERS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS
RAPID RESPONSE COORDINATORS
TRADE ADJUSTMENT ASSISTANCE LEADS

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Fiscal Year (FY) 2016 State Initial Allocations for Trade Adjustment Assistance (TAA) Training and Other Activities and the Process for Requesting TAA Reserve Funds

1. Purpose. To assist State Workforce Agencies or agencies designated by Governors as “Cooperating State Agencies” (CSAs) (also jointly referred to as “states”) by identifying the FY 2016 Initial Allocation amounts to states and describing the formula methodology the Department of Labor (Department) used to calculate these amounts; and to describe the process for states to request TAA reserve funds for training, employment and case management services, job search allowances, relocation allowances, and related state administration.

2. References.

- Consolidated Appropriations Act, 2016, Division H, Title I (Pub. L. 114-113);
- Chapter 2 of Title II of the Trade Act of 1974, as amended (Pub. L. 93-618) (1974 Act, as amended) (Trade Act);
- Trade Adjustment Assistance Reform Act of 2002, Division A, Title I, Subtitle A of the Trade Act of 2002 (Pub. L. 107-210) (as amended by the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108-429)) (TAARA);
- Trade and Globalization Adjustment Assistance Act of 2009, Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009 (TGAAA), (Pub. L. 111-5);
- Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112-40) (TAAEA);
- Balanced Budget and Emergency Deficit Control Act (BBEDCA), as amended by the Budget Control Act of 2011(BCA);
- Trade Adjustment Assistance Reauthorization Act of 2015 (Pub. L. 114-27) (TAARA 2015);

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- 20 CFR Part 618, Trade Adjustment Assistance, Subpart I; and
- TEGL No. 05-15, *Attachment A: Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Reauthorization Act of 2015*.

3. Definitions.

- *The 2002 Program* means the TAA Program carried out under chapter 2 of title II of the Trade Act of 1974, as amended by the TAARA, and applies to workers covered by petitions filed before May 18, 2009, and to workers covered by petitions filed on or after February 13, 2011, and before October 21, 2011, who receive benefits under this program under section 231(a)(1)(B) of the TAAEA (the “election” provision).
- *The 2009 Program* means the TAA Program carried out under chapter 2 of title II of the Trade Act of 1974, as amended by the TGAAA and applies to workers covered by petitions filed on or after May 18, 2009, and on or before February 12, 2011.
- *The 2011 Program* means the TAA Program carried out under chapter 2 of title II of the Trade Act of 1974, as amended by the TAAEA and applies to workers covered by petitions filed on or after February 13, 2011, and on or before December 31, 2013, and to workers covered by petitions filed on or after February 13, 2011, and before October 21, 2011, who receive benefits under this program under section 231(a)(1)(B) of the TAAEA (the “election” provision).
- *The 2015 Program* means the TAA Program carried out under chapter 2 of title II of the Trade Act of 1974, as amended by the TAARA 2015 and applies to workers covered by petitions filed on or after January 1, 2014.
- *Training and Other Activities* means training, job search allowances, relocation allowances, employment and case management services, and related state administration.

4. Background. The Trade Act of 1974 (Pub. L. No. 93-618), as amended (the Act) (codified at 19 U.S.C. §§ 2271 et seq.), Title II, Chapter 2, established the Trade Adjustment Assistance for Workers (TAA), Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment Assistance (RTAA) programs. These programs, collectively referred to as the Trade Adjustment Assistance Program (TAA Program), provide assistance to workers who have been adversely affected by foreign trade. The Consolidated Appropriations Act, 2016, signed into law on December 18, 2015, appropriates funds to carry out¹ the TAA Program through Fiscal Year (FY) 2016. The appropriation of \$861 million (which is subject to sequestration, as described below) is contained in the Department’s Federal Unemployment Benefits and Allowances (FUBA) account, and continues the full operation of the TAA Program through FY 2016. Under the language in the appropriations act, TAA Program funds are available during the fiscal year for the payment of Trade Readjustment Allowances (TRA), A/RTAA, training, employment and case management services, job search allowances, relocation allowances, and related state administration. The language specifically provides by cross-reference that the use of these funds includes the provision of Training and Other Activities to workers who are eligible for these activities under the 2002 Program, the 2009 Program, the 2011 Program, and the 2015 Program

¹ TRA and A/RTAA funds appropriated for FY 2016 are available for one fiscal year; however, Training and Other Activities funding is available for three fiscal years. CSAs may spend these Training and Other Activities funds in FYs 2016, 2017, and 2018. CSAs may refer to the FY 2016 TAA Annual Funding Agreement for additional information on the expenditure period for these funds.

in accordance with the requirements of the TAA law relating to those activities that were in effect at the time of filing of the petitions for certification that cover these workers. Specifically, the statutory language for FUBA in the Consolidated Appropriations Act reads as follows:

“For payments during fiscal year 2016 of trade adjustment benefit payments and allowances under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974, and section 246 of that Act; and for training, employment and case management services, allowances for job search and relocation, and related State administrative expenses under part II of subchapter B of chapter 2 of title II of the Trade Act of 1974, and including benefit payments, allowances, training, employment and case management services, and related State administration provided pursuant to section 231(a) of the Trade Adjustment Assistance Extension Act of 2011 and section 405(a) of the Trade Preferences Extension Act of 2015, \$861,000,000 together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15, 2016: Provided, that notwithstanding section 502 of this division, any part of the appropriation provided under this heading may remain available for obligation beyond the current fiscal year pursuant to the authorities of section 245(c) of the Trade Act of 1974 (19 U.S.C. 2317(c)).”

5. Application of Sequestration. BBEDCA, as amended by the BCA, requires a reduction for FY 2016 of 6.8 percent in budget authority for direct spending (sometimes referred to as “mandatory”) programs, which includes the TAA Program. Therefore, the \$861,000,000 appropriation for FY 2016 to carry out the TAA Program must be reduced by 6.8 percent (or \$58,548,000), leaving a total appropriation of \$802,452,000 available for distribution to the states. As it has done in previous years, the Department is applying the entire \$58,548,000 reduction to the funds for Training and Other Activities rather than applying reductions to each payment of TRA or A/RTAA. Specifically, the pre-sequestration amount of \$450,000,000 for Training and Other Activities described in the preceding paragraph is reduced by the \$58,548,000 required by sequestration, resulting in a FY 2016 national aggregate amount of \$391,452,000 available for Training and Other Activities. Information relating to available funding provided to states in the FY 2016 Initial Allocation by activity and amount is provided in the sections below.

6. FY 2016 National Aggregate Amount Available for Training and Other Activities. The FY 2016 funding allocated to states is to be used to carry out the 2002 Program, the 2009 Program, the 2011 Program, and the 2015 Program. In determining the FY 2016 funding available for TAA Training and Other Activities, the Department has taken into account both the funds appropriated to continue the full operation of the four programs and the application of sequestration, which results in the national aggregate amounts as follows:

- \$391,452,000 is the FY 2016 national aggregate amount available for expenditures for Training and Other Activities, which include funds for job search allowances, relocation allowances, employment and case management services, and related state administration to carry out all four programs. Of this amount:

- \$39,145,200 (or 10 percent of \$391,452,000) is the portion of FY 2016 funds available for related state administration. This percentage represents the *maximum* amount of FY 2016 funds that can be used for expenditures for state administration and was established to ensure that states have sufficient resources to provide continuity of service for the programs, as specified in TEGL No. 5-15, Attachment A, Section D.1. *Note: A state may NOT use more than 10 percent of its FY 2016 Training and Other Activities Allocation for costs related to state administration. However, a state may use a portion of the funds available for state administration for training, if needed, as long as these funds are not needed for state administration.*

- No less than \$19,572,600 (or a minimum of 5 percent of the FY 2016 funds available for Training and Other Activities) is the portion available to provide employment and case management services to TAA Program participants certified under the 2009 Program, the 2011 Program, and the 2015 Program. FY 2016 Training and Other Activities' funds may not be used to provide employment and case management services to workers covered by petitions certified under the 2002 Program. This five percent minimum is required to ensure TAA funds are available to provide the employment and case management activities to which workers under those programs are entitled, as specified in TEGL No. 5-15, Attachment A, Section G. *Note: A state may use more than the five percent (minimum) of the amount allocated to it for Training and Other Activities to provide TAA-funded employment and case management services if it determines that more funds are needed to provide such services to adversely affected workers in its state.*

7. Initial Allocations for FY 2016 Funds. The Department has determined the FY 2016 allocation of funds to states to provide training, job search allowances, relocation allowances, and related state administration (also referred to as Training and Other Activities) under all four programs, and to make available TAA-funded employment and case management services for 2009 Program, 2011 Program, and 2015 Program participants, based on the regulations at 20 CFR 618.910 through 618.940, as follows:

- Sixty-five (65) percent of the fiscal year funds are to be distributed by formula when the appropriation for the full fiscal year is available to the Department, with 35 percent of the FY 2016 funds held in reserve for distribution later in the fiscal year (or to be provided to a state in need of reserve funds at any time during the fiscal year as explained below);
- The *hold harmless* provision minimum allocation for the initial distribution is applied to ensure that a state receives at least 25 percent of the Initial Allocation that was made available to that state for the previous fiscal year;
- By July 15, 2016, at least 90 percent of the fiscal year funds are to be distributed; and
- The formula factors the Department must consider in determining the apportionment of the initial distribution of funds are specified in 20 CFR 618.910(f) and further described below in Section 8.

The calculation of the national aggregate amount for the FY 2016 Initial Allocation (65 percent of the amount available for Training and Other Activities) is \$254,443,800.

8. Application of the Funding Formula and Process for Requesting Reserve Funds.

Attachment A to this TEGL provides the amounts of FY 2016 funds that will be distributed in the Initial Allocation, by state. These amounts were determined under the TAA funding formula as described in 20 CFR 618.910(f) and summarized below:

A. TAA Formula Funds:

1. Trend in number of workers covered by certifications during the most recent four consecutive calendar quarters for which data are available;
2. Trend in number of workers participating in training during the most recent four consecutive calendar quarters for which data are available;
3. Number of workers estimated to be participating in training during the fiscal year; and
4. Estimated amount of funding needed to provide approved training to such workers during the fiscal year.

Factor 1 will be established using the most recent four quarters (FY 2015 Quarter 1 through FY 2015 Quarter 4) of data for certified workers by state, and the quarters will be weighted 40 percent; 30 percent; 20 percent; and 10 percent, respectively, from the most recent to the earliest quarter. This approach will establish a trend, giving the most recent quarters a greater impact on each factor than an earlier quarter.

Factor 2 will be established using the most recent four quarters (FY 2015 Quarter 1 through FY 2015 Quarter 4) of data for workers participating in training by state, and the quarters will be weighted 40 percent; 30 percent; 20 percent; and 10 percent, respectively, from the most recent quarter to least recent quarter. As with Factor 1, this approach will establish a trend, giving the most recent quarters a greater impact on each factor than an earlier quarter.

Factor 3 will be determined by dividing the weighted average number of training participants for the state determined in Factor 2 by the sum of the weighted averages for all states and multiplying the resulting ratio by the projected national average of training participants for the fiscal year, using the estimates underlying the Department's most recent budget submission or update.

Factor 4 will be calculated by multiplying the estimated number of participants in Factor 3 by the average training cost per participant in the state. The average training cost will be calculated by dividing total training expenditures for the most recent four quarters by the average number of training participants for the same period.

Once each of the four factors have been determined for each state, under 20 CFR 618.910(f)(3) all four factors will be assigned an equal weight. For FY 2016, the weight will be 25 percent of the total for each factor.

Section 618.910(c) of 20 CFR includes a *hold harmless* provision. The regulation provides that a state's Initial Allocation must be at least 25 percent of the amount the state received in its Initial Allocation for the prior fiscal year.

The Department will determine each state's percentage of the national total for each factor. Using each state's percentage of each of these weighted factors, the unadjusted percentage that the state will receive of the amount available for initial allocations will be determined. Following 20 CFR 618.910(c) through (e), a state's allocation amount less than \$100,000 will be removed from the calculation, as described below, and the statutory 25 percent *hold harmless* provision will be applied, resulting in the adjusted FY 2016 Initial Allocations for the remaining states.

In those instances where the formula approach would give a state less than \$100,000, 20 CFR 618.910(e)(2)(i) is applied. Under that regulation, a state with an allocation calculated under the formula to be an amount less than \$100,000 will not receive any initial allocation. Those states may request TAA Program reserve funds in accordance with the procedures described below in Section B.

B. TAA Program Reserve Funds: States may request reserve funds in accordance with 20 CFR 618.920(b) before the distribution of the Initial Allocation, and at any other time during the fiscal year. States must use the Reserve Funding Request Form ETA-9117 (OMB No. 1205-0275) to request these funds.

To be eligible for TAA Program reserve funds, a state must demonstrate that at least 50 percent of TAA funds made available to that state in the current fiscal year and the two preceding fiscal years have been expended or that the state needs additional funds to meet unusual or unexpected events. A state requesting reserve funds must also provide a documented estimate of expected funding needs through the end of the fiscal year. A state must base its estimate on an analysis that includes at least the following:

- The average cost of training in the state;
- The expected number of participants in Training and Other Activities through the end of the fiscal year; and
- The remaining funds the state has available for Training and Other Activities.

9. Recapture and Reallocation of Funds. Section 245(c) of TAARA 2015, in conjunction with the language cross-referencing that section contained in the Consolidated Appropriations Act, 2016, Division H, Title I, under the FUBA heading, provides authority for the Department to recapture unexpended TAA funds from states that have not fully used their funding in the second and third fiscal year after the fiscal year in which the funds were provided to the state, and reallocate those funds to other states to provide and administer employment and case management services, training, job search allowances, and relocation allowances. The Department will implement Section 245(c) by establishing procedures for recapture of these funds and reallocating them to meet state funding needs for Training and Other Activities, as specified in TEGP No. 5-15, Attachment A, Section D.1.1., and will issue guidance at a future date.

10. Action Requested. CSAs are required to implement the guidance set forth herein and must continue to administer the TAA Program in accordance with applicable Operating Instructions for the 2002 Program, the 2009 Program, the 2011 Program, and the 2015 Program. CSAs must inform all appropriate staff of the contents of this guidance.

11. Inquiries. Inquiries regarding this guidance should be directed to the appropriate Regional Office.

12. Attachment. Attachment A: TAA FY 2016 Initial Allocation Amounts by State