

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
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TO: ALL STATE WORKFORCE LIAISONS
 ALL STATE WORKFORCE AGENCIES
 ALL ONE-STOP CENTER SYSTEM LEADS

FROM: JANE OATES /s/
 Assistant Secretary

SUBJECT: Promulgation of 20 CFR Part 618 Trade Adjustment Assistance: Merit Staffing of State Administration and Allocation of Training Funds to States

1. Purpose. To assist the State Workforce Agencies designated by the Governors as “cooperating state agencies” (CSAs) for administration of the Trade Adjustment Assistance (TAA) program in implementing the funding and merit staffing of state administration provisions of the new regulations at 20 CFR Part 618, published on April 2, 2010 (75 Fed. Reg. 16988 - 17002).

2. References. The Trade and Globalization Adjustment Assistance Act of 2009, Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, Public Law (P. L.) No. 111-5 (enacted February 17, 2009) (the TGAAA); the Trade Act of 1974, as amended (P. L. No. 93-618, as amended) (the Trade Act); 20 CFR Part 617; 29 CFR Part 90; 20 CFR Part 618; Training and Employment Guidance Letter (TEGL) No. 9-09, TEGL No. 22-08 and TEGL No. 4-08, Change 1.

3. Background. The TAA program, under Chapter 2 of Title II of the Trade Act (19 U.S.C. 2271 *et seq.*), provides adjustment assistance for workers whose jobs have been adversely affected by international trade. TAA assistance includes training, case management and reemployment services, income support, job search and relocation allowances, a wage supplement option for older workers, and eligibility for a health coverage tax credit.

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The states provide benefits and services in the TAA program as agents of the United States. Each state does so through one or more state agencies designated as the CSA(s) in a Governor-Secretary Agreement between the state's Governor and the United States Secretary of Labor (Secretary), as required under section 239 of the Trade Act. The CSA may include the State Workforce Agency (if different from the agency that administers the unemployment insurance (UI) laws for the state) and other state or local agencies that cooperate in the administration of the TAA program, as provided in the Governor-Secretary Agreement.

4. New Regulatory Provisions. A Final Rule (63 FR 16988, April 2, 2010) added a new part 618 to 20 CFR to implement a new requirement that states merit staff the administration of their TAA programs. It also, as required by the TGAAA, provided the formula and methodology for the distribution to the states of TAA training funds. This Final Rule may be found at <<http://www.gpo.gov/fdsys/pkg/FR-2010-04-02/pdf/2010-6697.pdf>>. A subsequent rulemaking will expand part 618 to encompass all of the TAA program, as revised by the TGAAA. Specifically, the Final Rule adds a new section 618.890 of 20 CFR to provide that, after a transition period, a state must engage only state government personnel to perform TAA-funded functions undertaken to carry out the TAA program, and must apply to these personnel the standards for a merit system of personnel administration, in accordance with Office of Personnel Management (OPM) regulations at 5 CFR Part 900, subpart F.

However, a state whose Employment Service (ES) received an exemption from merit staffing requirements under the Wagner-Peyser Act will retain an exemption from the TAA merit staffing requirement. The ES exemption applies to state administration of TAA to the extent that the state provides TAA-funded services using staff of an agency that provides ES services. The exemption does not apply to the state's administration of TRA, which remains subject to the TAA merit staffing requirement. Further, the TAA merit staffing requirement does not prohibit a state from outsourcing functions that are not inherently governmental, as defined in Office of Management and Budget (OMB) Circular No. A-76 (Revised), in any supplemental OMB guidance or superseding authority, and in Department of Labor (Department) guidance.

The OPM regulations specify the merit system standards required for certain Federal grant programs. These standards have always been required for personnel administering UI (section 303(a)(1) of the Social Security Act) and have also been required for Wagner-Peyser Act-funded ES programs in the states (20 CFR 652.215). They also were required for all personnel administering TAA from 1975 until 2005 under the Governor-Secretary Agreements.

OPM's merit system standards at 5 CFR 900.603 are as follows:

- (a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
- (b) Providing equitable and adequate compensation.
- (c) Training employees, as needed, to assure high quality performance.
- (d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
- (e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.
- (f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

The purpose of requiring the application of these merit principles to state administration of the TAA program is to promote consistency, efficiency, accountability, and transparency. The new merit staffing provisions become applicable to TAA-funded positions on December 15, 2010, as codified in the new regulation at 20 CFR 618.890(b), to allow states sufficient time for transition.

The second new regulatory requirement in part 618 concerns the methodology by which the Department allocates training funds to the states. In addition to increasing the funds annually available under the training cap, the TGAAA prescribed a formula for allocating training funds to the states. As required by the TGAAA, and codified in the new regulation at 20 CFR 618.910(f), the initial allocation of training funds is determined by four factors: (1) the trend in the number of workers covered by certifications of eligibility during the most recent four consecutive calendar quarters for which data is available; (2) the trend in the number of workers participating in training during the most recent four consecutive calendar quarters for which data is available; (3) the number of workers estimated to be participating in training during the fiscal year; and (4) the amount of funding estimated to be necessary to provide approved training during the fiscal year. At present, the Department will assign each of these factors an equal weight. A "hold harmless" provision, 20 CFR 618.910(c), requires that a state's initial allocation be at least 25 percent of the amount the state received in its initial allocation the prior fiscal year.

For each of the four factors, the Department will determine the national total and each state's percentage of the national total. Based on a state's percentage of each of these factors, the Department will determine the percentage that the state will receive of the amount available for initial allocations, and will adjust that percentage to account for the hold harmless provision (20 CFR 618.910(e)). The total initial allocations to the states will total 65 percent of the training funds appropriated (as mandated by section 236(a)(2)(C) of the Trade Act, as amended by the TGAAA and codified at 20 CFR 618.910(a)).

The Department's practice has been that, if the formula would result in an initial allocation of less than \$100,000 to a state, then that state's allocation was reallocated to the other states. Where a state had an initial allocation of less than \$100,000, it could request reserve funds in order to obtain the limited TAA funding that the state required. This practice is now codified in the new regulation at 20 CFR 618.910(d).

The TGAAA amended the Trade Act to require the Department to make the initial distribution to states "as soon as practicable after the beginning of each fiscal year." The Act further requires that 90 percent of a fiscal year's training funds be distributed to the states by July 15 of that fiscal year. As provided in the new regulation at 20 CFR 618.930, the Department will consider requests for reserve funds received prior to June 1, before making a formula distribution to meet the 90 percent requirement.

Although not a part of these new regulations, the Department will also, in accordance with the TGAAA and implementing guidance documents, such as TEGL No. 9-09 and TEGL No. 4-08, Change 1, provide to states that receive training funds, either through an initial allocation or through a request for reserve funds, an additional 15 percent for TAA administration and employment and case management services, as well as an additional \$350,000 to each state specifically for employment and case management services.

The funding provision is formally effective on May 3, 2010; however, consistent with the TGAAA, it has already been used to determine FY 2010 allocations to states, as described in TEGL No. 9-09.

5. Action Requested. CSAs are required to implement the requirements of 20 CFR Part 618 under the provisions of their respective Governor-Secretary Agreements by the dates specified in the regulation. Funding provisions are effective May 3, 2010; and merit staffing provisions for positions funded with TAA funds are effective December 15, 2010.

As provided under 20 CFR 618.930, CSAs should make any request for needed Reserve Funds by the June 1 regulatory deadline in writing to the appropriate Regional Office to ensure that they receive those funds before the July 15 allocations.

6. **Inquiries.** CSAs should direct all inquiries to the appropriate Employment and Training Administration Regional Office.

7. **Attachments.**

Attachment A: Trade Adjustment Assistance Final Rule on Merit Staffing of State Administration and Allocation of Training Funds to States – Fact Sheet

Attachment B: Trade Adjustment Assistance Final Rule on Merit Staffing of State Administration and Allocation of Training Funds to States – Questions and Answers