

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
 STATE TRADE COORDINATORS

FROM: JANE OATES /s/
 Assistant Secretary

SUBJECT: Fiscal Year (FY) 2011 State Initial Allocations and the Process for Requesting Additional Trade Adjustment Assistance (TAA) Program Reserve Funds

1. Purpose. To provide states with the formula methodology used in developing the FY 2011 initial allocations and to describe the process for requesting additional TAA program reserve funds for training, job search, and relocation allowances.

2. References. The Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) (Division B, Title I, Subtitle I of the “American Recovery and Reinvestment Act of 2009” (Recovery Act), Public Law (P.L.) No. 111-5 (enacted February 17, 2009); Consolidated Omnibus Appropriations Act, 2009, P.L. 111-8 (enacted March 11, 2009); the Trade Act of 1974, as amended (Trade Act) (P.L. No. 93-618, as amended); Training and Employment Guidance Letter (TEGL) No. 22-08, “Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009”; Training and Employment Guidance Letter (TEGL) No. 22-08, Change 1 “Change 1 to the Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009”; TEGL 6-09, “Instructions for Implementing the Revised 2010 Trade Adjustment Assistance Trade Activity Participant Report (TAPR)”; TEGL No. 9-09, “Fiscal Year 2010 State Initial Allocations and the Process for Requesting Additional Trade Adjustment Assistance (TAA) Program Reserve Funds”;

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TEGL No. 9-09, Change 1, "Fiscal Year 2010 Second Distribution of Trade Adjustment Assistance (TAA) Training Funds to States"; 20 CFR Part 618 "Trade Adjustment Assistance; Merit Staffing of State Administration and Allocation of Training Funds to States; Final Rule," (75 Fed. Reg. 16988- 17002, April 2, 2010); TEGL No. 6-09, "Instructions for implementing the revised 2010 Trade Adjustment Assistance Trade Activity Participant Report (TAPR)".

3. Background.

On February 17, 2009, President Obama signed the Recovery Act into Law. Part of the Recovery Act, the TGAAA reauthorized and made substantial changes to the TAA program. The TGAAA amended Section 236(a)(2)(A) of the Trade Act to increase the cap on TAA training funds from \$220 million to \$575 million annually in both FY 2009 and FY 2010 and capped training funds for the first quarter of FY 2011 (October 1, 2010 through December 31, 2010) at \$143,750,000, consistent with a projected annual allocation of \$575 million under the expected reauthorization of the Act.

The TGAAA further amended Section 236(a)(2)(B) and (C) of the Trade Act to:

- Require 35, rather than 25 percent of the training funds to be held in reserve;
- Provide for a "hold harmless" of 25, rather than 85 percent;
- Set timelines for the distribution of training funds; and
- Establish specific formula factors that the Employment and Training Administration (ETA) must consider in making those distributions.

The final regulations that govern these provisions, 20 CFR 618.900 – 618.940, went into effect April 2, 2010, with the publication of 20 CFR 618 "Trade Adjustment Assistance; Merit Staffing of State Administration and Allocation of Training Funds to States; Final Rule."

Although the Recovery Act reauthorized the TAA program and raised the cap on training funds, it did not appropriate any funds for the TAA program. Rather, the Consolidated Omnibus Appropriations Act, 2009, P.L. No. 111-8, appropriated TAA administrative and program funds to the Federal Unemployment Benefits and Allowances (FUBA) account. The FY 2010 distributions of funds under TEGL 9-09 were FUBA appropriations. The FY 2011 distributions will also be FUBA appropriations. Therefore, separate tracking and reporting requirements, which apply specifically to Recovery Act funds, do not apply to the TAA funds provided to the states from this and future FUBA appropriations. However, as discussed in TEGL No. 22-08, the TGAAA established new reporting requirements specific to the TAA program to increase the transparency and accountability of the program. ETA issued additional guidance on those requirements in TEGL No. 6-09, "Instructions for implementing the revised 2010 Trade Adjustment Assistance Trade Activity Participant Report (TAPR)." Funding amounts for each state are based upon TAPR data that each state submits quarterly.

4. FY 2011 TAA Training Fund Distribution Process. As noted above, the TGAAA increased the cap on TAA training funds from \$220 million annually to \$575 million for both FY 2009 and FY 2010. Under current authorization, this cap is set to expire December 31, 2010 and revert back to the \$220 million level. However, there is a possibility that the higher cap will be reauthorized through FY 2011. With this in mind, two attachments have been prepared for this TEGF showing the State Initial Allocations for FY 2011. The first shows the initial allocations with reauthorization at the \$220 million level and the second attachment shows the initial allocations with reauthorization at the \$575 million level. For FY 2011, an amount equal to 65 percent of the annual training funds is initially distributed to states by formula and 35 percent will be held in reserve as required by the amendments and 20 CFR 618.910 – 618.930.

A. TAA Formula Funds: The initial allocation of 65 percent of training funds among the states will follow the four factors set forth in the new Section 236(a)(2)(C)(ii) of the Trade Act and explained in 20 CFR 618.910(f):

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 2009 Quarter 4 through FY 2010 Quarter 3) 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 will have.

Factor 2 will be established using the most recent four quarters (FY 2009 Quarter 4 through FY 2010 Quarter 3) 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 will have.

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 ETA'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 for 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 time 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 2011, the weight will be 25 percent of the total for each factor.

Section 236(a)(2)(C)(iii) of the Trade Act includes a hold harmless feature. The statute now provides that a state's initial allocation be at least 25 percent of the amount the state received in its initial allocation for the prior fiscal year. This requirement is codified at 20 CFR 618.910(c).

ETA will determine the national total and each state's percentage of the national total for each factor. Using each state's percentage of each of these weighted factors, ETA will determine the unadjusted percentage that the state will receive of the amount available for initial allocations. As provided in 20 CFR 618.910 (c), (d) and (e), allocations under \$100,000 will be removed, and the statutory 25 percent hold harmless factor will be applied, resulting in an adjusted FY 2011 allocation for the remaining states. If the program is reauthorized at the \$575,000,000 level, the percentages for all the states will total 100 percent of \$373,750,000, which is 65 percent of the training cap. If the program reverts back to the \$220,000,000 level, the percentages for all the states will total 100 percent of \$143,000,000, which is 65 percent of the training cap.

In those instances where the formula approach would give a state less than \$100,000, 20 CFR 918.910(e)(2)(i) provides that that state will not receive any initial allocation, but may, where needed, request TAA reserve funds in accordance with the procedures described in Section B.

The initial allocations for each state are attached.

B. TAA Reserve Funds: Funds will not be distributed under the funding formula until the funding situation becomes clearer. Until that time, states may request reserve funds. Reserve funds will be distributed to states in accordance with 20 CFR 618.920 on an as-needed basis to provide monies to those states that experience large, unexpected layoffs or otherwise have training needs that are

not met by their initial allocation. These funds must be requested using the ETA-9117 (OMB No. 1205-0275).

In order to be eligible for TAA reserve funds, a state must demonstrate that at least 50 percent of its training funds have been expended or that it needs more funds to meet unusual or unexpected events. A state requesting reserve funds also must provide a documented estimate of expected funding needs through the end of the fiscal year. That estimate must be based on an analysis that includes at least the following:

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

C. **Job Search and Relocation Allowances:** States may also request job search and relocation allowances for adversely affected workers who have no reasonable expectation of obtaining suitable employment within their local commuting areas. These funds must also be requested using the ETA-9117 (OMB No. 1205-0275) and may be submitted at any time or in combination with a request for reserve training funds.

D. **TAA Program Administration Funds:** States will receive an additional 15 percent of all supplemental allocation and reserve funds for program administration, as provided by Section 235A(a)(1) of the Trade Act. Not more than two-thirds of these additional funds may be used to cover administrative expenses, and not less than one-third of such funds may be used for the purpose of providing employment and case management services, as provided by Section 235A(a)(2) of the Trade Act. Guidance is provided in TEGL No. 22-08. If the 2009 Amendments expire, this limitation will change, and additional guidance will be provided. The administrative funds will be included each time funds are obligated to states by ETA. The program administration allocations for each state are also included in the attachment.

E. **Employment and Case Management Services Funds:** Each state that receives FY 2011 TAA funds will receive \$350,000 for the purpose of providing employment and case management services to TAA participants, as provided by Section 235A(b)(1) of the Trade Act. A state that does not receive the \$350,000 for case management services because it received no initial allocation will receive those funds if it subsequently receives a reserve funding allocation.

5. Recapture of TAA Funds. Consistent with the FY 2011 TAA Annual Cooperative Financial Agreement, ETA may recapture any funds distributed to any state in the same

fiscal year as they were given if it determines that the state will not expend the funds, but only after consultation with, and appropriate notification to, state officials.

6. Action Requested. States will inform all appropriate staff of the contents of these instructions.

7. Inquiries. States should direct all inquiries to the appropriate ETA regional office.

8. Attachments.

Attachment A: State Initial Allocations for FY 2011 at the \$220,000,000 level.

Attachment B: State Initial Allocations for FY 2011 at the \$575,000,000 level.