

**U.S. Department of Labor
Employment and Training Administration**

**Trade Adjustment Assistance Final Rule on Merit Staffing of State
Administration and Allocation of Training Funds to States**

Questions and Answers

What does this regulation do?

This rule prescribes the system for allocating Trade Adjustment Assistance (TAA) training funds to states, as required by the Trade and Globalization Adjustment Assistance Act (TGAAA) (P.L. No. 111-5). The TGAAA was included in the American Recovery and Reinvestment Act of 2009 and amends the Trade Act. The rule also requires that TAA-funded personnel providing services and benefits to workers covered by TAA certifications must be state employees covered by a merit system of personnel administration, with some exceptions discussed below.

What is the new funding methodology?

The changes to the funding methodology contained in this rule improve the way the Department provides TAA training funds to states. The new formula, mandated by the TGAAA and explained in this regulation, provides states with a predictable level of funding by formula at the start of a Fiscal Year, and allows for additional allocations of funds that respond more quickly to states' needs than the preceding formula the Department had used. The initial allocations to the states will be determined by the formula factors described below and will total 65 percent of the training funds appropriated—65 percent of \$575 million, as specified in the TGAAA. The remaining 35 percent will be held in reserve. A “hold harmless” provision requires that a state receive in the initial allocation at least 25 percent of that state's initial allocation in the prior fiscal year.

Reserve funds will be distributed to the states on an as-needed basis. This will provide needed funds to states experiencing large, unexpected layoffs; to states that did not receive an initial allocation; and to states whose training needs were not met by their initial allocation. The rule also codifies the past practice of providing no initial allocation to states that would receive less than \$100,000 under the formula. It also reflects the requirement in the TGAAA that at least 90 percent of the TAA training funds be distributed by July 15 each year. Taken together, these changes allow the distribution of TAA training funds to be more closely aligned with the states' actual needs.

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How does the funding formula in this rule differ from the formula used before the TGAAA?

The funding formula differences are detailed in the table below:

Old Funding Formula (used FY 2004-2008)	New Funding Formula (used in FY 2010)
Formula Factors (2)	Formula Factors (4)
1. Accrued training expenditures. 2. Average number of training participants.	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 TAA approved training during the fiscal year; and 4. The amount of funding estimated to be necessary to provide approved training during the fiscal year.
Hold Harmless (85%)*	Hold Harmless (25%)
Based on 12 Quarters of Data	Based on 4 Quarters of Data
75% of Available Funds Allocated in Initial Distribution	65% of Available Funds Allocated in Initial Distribution
25% Reserve Funding	35% Reserve Funding
	90% Fund Distribution by July 15

*Hold Harmless: A state will receive no less than the specified percent of the initial allocation that it received the previous year.

What does the merit staffing requirement do?

States administer the provision of benefits and services in the TAA program as agents of the United States. Each state does so through a state agency designated in an Agreement between the state's Governor and the United States Secretary of Labor. This regulation requires that, after a transition period, a state must (with exceptions described below) engage only state government personnel to perform TAA-funded functions undertaken to carry out the state's

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responsibilities under the Trade Act, and must apply to these personnel the standards for a merit system of personnel administration.

What are the standards for a merit system of personnel administration?

The merit system standards, established by Office of Personnel Management regulation at 5 CFR 900.603, are:

- (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.

Why is the Department mandating the use of state merit staff personnel to administer the program?

The state personnel working in the TAA program make complex determinations about the newly expanded federally-funded services and benefits which workers covered by TAA certifications may receive. Many of the benefits available under the TAA program are entitlements for eligible workers. As in other DOL programs involving entitlements, benefit decisions must be made by merit staffed state employees. State personnel serving under a merit system are unbiased, non-partisan public servants who are directly accountable to government entities. The standards for their performance and their determinations on the use of public funds require that decisions be made in the best interest of the public and of the population to be served. By requiring merit staffing, the Department seeks to ensure that benefit decisions and services are provided in the most consistent, efficient, accountable, and transparent way.

Is the merit staffing requirement a new requirement for TAA?

No. Since the program began in 1975, states have administered the TAA program as agents of the United States. This relationship is established through agreements between Governors and the Secretary of Labor and is commonly referred to as the Governor-Secretary Agreement. From 1975, when the Department began administration of the TAA program, until 2005, the Governor-

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Secretary Agreements required that TAA-funded administrative functions be carried out exclusively by staff subject to the merit standards. In 2005, the Governor-Secretary Agreements were modified to remove this requirement for all but the administration of trade readjustment allowances. By reinstating the requirement, this rule simply restores what had been the long-standing practice for the thirty years prior to 2005.

Are there exemptions to the use of merit staff?

There is a partial exemption from the use of merit staff for three states which have received an exemption from the Employment Service merit staffing requirements under the Wagner-Peyser Act. Those three states are Colorado, Massachusetts, and Michigan. The merit staffing requirement also does not prevent a state from outsourcing functions that are not inherently governmental, as defined by the Office of Management and Budget Circular number A-76. Non-inherently governmental functions are, generally, those that do not involve the exercise of discretion in program administration, such as janitorial and information technology services.

Will the merit staffing requirement apply to all TAA administration funds, or just funds that were appropriated after the enactment of the TGAAA?

The merit staff requirement applies to staff performing all TAA-funded administration and employment and case management service activities beginning on December 15, 2010, regardless of when the funds used were appropriated.

May Workforce Investment Act (WIA) staff provide services to TAA eligible participants?

Yes. The regulation permits the delivery of services to TAA participants for which they are eligible under partner programs, including WIA. Those services may be provided under the rules governing the program that funds them. The Department encourages co-enrollment of workers in both the WIA and TAA programs to ensure that adversely affected workers receive services to help them to return to work. States will need to coordinate and integrate partner programs through the One-Stop system to ensure workers covered by TAA certifications are provided an array of comprehensive services that will facilitate their transition back into the workforce.

When does this new regulation take effect?

The Rule goes into effect 30 days after it is published in the Federal Register. In response to comments received on the proposed rule, the Department has adopted a longer transition period with a deadline of December 15, 2010, for states to comply with the merit staffing requirements in the rule.

Will this be the only regulation for the TGAAA?

No. This rulemaking addresses only the staffing of TAA-funded functions and the allocation of TAA training funds to the states. A later NPRM will include the remaining aspects of the TGAAA, such as the expanded program coverage and increased benefits.