

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 3-16

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
TRADE ADJUSTMENT ASSISTANCE LEADS

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Second Distribution of Fiscal Year (FY) 2016 Trade Adjustment Assistance (TAA) Training and Other Activities Funds and the Process for Requesting TAA Program 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”) in administering the TAA program (as described below in Section 3) by identifying the FY 2016 Second Distribution 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 Program 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 (Pub. L. 111-5) (TGAAA);
- Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112-40) (TAAEA);
- Trade Adjustment Assistance Reauthorization Act of 2015 (Pub. L. 114-27) (TAARA2015);
- Balanced Budget and Emergency Deficit Control Act (BBEDCA), as amended by the Budget Control Act of 2011 (Pub. L. 112-25) (BCA);
- 20 CFR Part 618, Trade Adjustment Assistance, Subpart I;

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- TEGL No. 05-15, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Reauthorization Act of 2015*;
- TEGL No. 21-15, *Fiscal Year (FY) 2016 State Initial Allocations for Trade Adjustment Assistance (TAA) Training and Other Activities and the Process for Requesting TAA Reserve Funds*; and
- *Trade Adjustment Assistance (TAA) Annual Funding Agreement (AFA) Fiscal Year 2016*.

3. **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 TAA Program, provide assistance to workers who have been adversely affected by foreign trade. TEGL No. 21-15 explained that the regulations codified at 20 CFR 618.910 through 618.940 govern the distribution of funds. The regulations at 20 CFR 618.910 provide that 65 percent of the fiscal year Training and Other Activities funds are to be distributed by formula in an Initial Allocation of funds to states when the appropriation for the full fiscal year is available. The remaining 35 percent of these funds are held in reserve for later distribution or provided to states in need of reserve funds, in accordance with 20 CFR 618.920. The regulations at 20 CFR 618.930 prescribe how and when the Department must provide funds in the Second Distribution. This Second Distribution is the subject of this TEGL.

TEGL No. 21-15 also explains how the Consolidated Appropriations Act, 2016, governs the use of FY 2016 funds. FY 2016 funds may be used to provide 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 in accordance with the requirements of the TAA law in effect relating to those activities that were in effect at the time of filing of the petition for certification that covers these workers. Please refer to TEGL No. 21-15 for the definitions of these programs.

4. **Second Distribution of FY 2016 Funds.** In accordance with 20 CFR 618.930, by July 15 of each fiscal year, at least 90 percent of the funds appropriated for Training and Other Activities for the entire fiscal year will be allocated to states. Any funds that remain after the Second Distribution of funds and any subsequent reserve requests will be allocated to the states before the end of the fiscal year.

We derived the FY 2016 Second Distribution amount by using 90 percent of the FY 2016 Federal Unemployment Benefits and Allowances (FUBA) appropriation Training and Other Activities amount, post-sequestration, as the starting point. *Note: The FY 2016 FUBA appropriation is described in TEGL No. 21-15 including a discussion of the derivation of pre-sequestration and post-sequestration amounts in accordance with the BBEDCA.* Next, we subtracted the Initial Allocation from this amount. The remaining amount is the total Second Distribution amount to be distributed by formula to states, as announced in the Attachment of this TEGL. The Second Distribution of funds will be distributed to those states that received an Initial Allocation, using the same methodology as used for the Initial Allocation and according to the requirements set forth in 20 CFR 618.930.

5. **Funding Formula and the Process for Requesting Reserve Funds.** The Attachment to this TEGL provides the amounts of FY 2016 Training and Other Activities funds, by state,

that the Department will allocate by July 15 in the Second Distribution. These amounts were determined under the TAA funding formula as described in 20 CFR 618.910(f):

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 was established using the most recent four quarters (FY 2015 Quarter 3 through FY 2016 Quarter 2) of data for certified workers by state, and the quarters were weighted 40 percent; 30 percent; 20 percent; and 10 percent, respectively, from the most recent to the earliest quarter. This approach establishes a trend, giving the most recent quarters a greater impact on each factor than an earlier quarter.

Factor 2 was established using the most recent four quarters (FY 2015 Quarter 3 through FY 2016 Quarter 2) of data for workers participating in training by state, and the quarters were 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 establishes a trend, giving the most recent quarters a greater impact on each factor than an earlier quarter.

Factor 3 was 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 was 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 was 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 were determined for each state under 20 CFR 618.910(f)(3), all four factors were assigned an equal weight. For FY 2016, the weight is 25 percent of the total for each factor.

Using the steps above, the Department determined each state's percentage of the national total for each factor. Using each state's percentage of each of these weighted factors, we determined the unadjusted percentage that the state will receive of the amount available for the Second Distribution.

- B. TAA Program Reserve Funds:** States may also request reserve funds in accordance with 20 CFR 618.920(b) at any other time during the fiscal year. The procedures for

requesting reserve funds and the eligibility for receiving reserve funds have not changed since the issuance of TEGL No. 21-15.

States must use the Reserve Funding Request Form ETA-9117 (OMB Approval No. 1205-0275) to request these funds. To be eligible for TAA 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. States must base their 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.

6. Use of Funds. A state's allocation of FY 2016 funds in this distribution may be used to pay the costs for the provision of Training and Other Activities, including costs of related state administration and employment and case management services that states incur in the provision of these benefits and services. However, use of the FY 2016 funds is subject to the following restrictions under the FY 2016 TAA Annual Funding Agreement:

- **State Administration.** The maximum amounts of FY 2016 Training and Other Activities funds available for state administration are provided in the Attachment to this TEGL and the Attachment to TEGL No. 21-15. Until the Final Distribution of FY 2016 funds are provided to states, which will occur before the end of FY 2016, these amounts represent the maximum amount of FY 2016 Training and Other Activities funds that may be used for expenditures for state administration. These amounts were 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.*
- **Employment and Case Management Services.** The minimum amounts of FY 2016 Training and Other Activities funds a state may use to provide Employment and Case Management Services are provided in the Attachment to this TEGL and the Attachment to TEGL No. 21-15. Until the Final Distribution of FY 2016 funds, which will occur before the end of FY 2016, these amounts represent the minimum amount of FY 2016 funds that must be used for these purposes. States must use at least 5 percent of their FY 2016 Training and Other Activities funds to provide employment and case management services to TAA Program participants certified under the 2009 Program, the 2011 Program, and the 2015 Program. These 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. **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.
8. **Inquiries.** Inquiries regarding this guidance should be directed to the appropriate Regional Office.
9. **Attachment.** Attachment A: TAA FY 2016 Second Distribution Funding Amounts by State