

<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> TAA
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**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 30-16**

**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  
RAPID RESPONSE COORDINATORS  
TRADE ADJUSTMENT ASSISTANCE LEADS

**FROM:** Byron Zuidema /s/  
Deputy Assistant Secretary

**SUBJECT:** Initial Allocation of Fiscal Year (FY) 2017 of Trade Adjustment Assistance (TAA) Training and Other Activities (TaOA) Funds 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 Fiscal Year (FY) 2017 Initial Allocation amounts to states and describing the formula methodology the Department of Labor (Department) uses to calculate these amounts; and to describe the process for states to request Trade Adjustment Assistance (TAA) Program reserve funds for Training and Other Activities (TaOA), which includes training, employment and case management services, job search allowances, relocation allowances, and related state administration.

**2. References.**

- Consolidated Appropriations Act, 2017, Division H, Title I (Pub. L. 115-31);
- 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, Title IV) (TAARA 2015);

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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- 20 CFR Part 618, Trade Adjustment Assistance, Subpart I;
- 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 (TAARA 2015)*;
- TEGL No. 05-15, *Change 1 to the Trade Adjustment Assistance (TAA) Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015)*; and
- UIPL No. 09-17, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2017*.

### **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 (TaOA) Funds* means funds provided to the states for TAA Program participants who meet eligibility requirements for training, job search allowances, relocation allowances, employment and case management services, and related state administration.
- *Trade Readjustment Allowance (TRA) Funds* means funds provided to the states for TAA Program participants for income support available in the form of weekly cash payments to workers who are enrolled in a full-time training course.
- *Alternative Trade Adjustment Assistance (ATAA) and Reemployment Trade Adjustment Assistance (RTAA) Program Funds* means funds provided to states for wage supplements provided to eligible TAA Program participants over the age of 50 that supplement a portion of the wage difference between their new wage and their old wage (up to a specified maximum amount).
- *TAA Program Funds* means funds appropriated to carry out TAA Program activities authorized under chapter 2 of title II of the Trade Act of 1974, and include funds for the provision of TaOA, TRA and A/RTAA to workers adversely affected by foreign trade.

**4. Scope.** While the information provided herein relates to the national aggregate amount of FY 2017 TAA Program funds, this TEGL describes the allocation of funds and the process states must use to request reserve funds for TaOA expenditures. CSAs are encouraged to consult their Unemployment Insurance (UI) Annual Funding Agreements and appropriate Regional Office staff for instructions on the process for accessing FY 2017 TRA, ATAA, and RTAA funds.

**5. Background.** The Trade Act of 1974 (Pub. L. No. 93-618), as amended (the Trade 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, 2017, signed into law on May 5, 2017, appropriates FY 2017 funds to carry out the TAA Program. The Act includes an appropriation of \$849 million for the Department's Federal Unemployment Benefits and Allowances (FUBA)<sup>1</sup> account spread across three program activities: TaOA (\$450 million), TRA (\$357 million) and A/RTAA (\$42 million)<sup>2</sup>. In addition, funds may be used to provide benefits and services to workers under the 2002 Program, the 2009 Program, the 2011 Program, and the 2015 Program 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.

**6. Application of Sequestration.** BBEDCA, as amended by the BCA, requires a reduction for FY 2017 of 6.9 percent in budget authority for direct spending (sometimes referred to as "mandatory") programs, which includes the TAA Program. The full appropriated amount of \$849,000,000 is reduced by 6.9 percent (or \$58,581,000), leaving a total appropriated amount of \$790,419,000 available for distribution to the states. As has been done in previous years, using the flexibility under the BBEDCA, the Department is applying the entire \$58,581,000 reduction to the funds available for TaOA rather than applying reductions to each payment of TRA or A/RTAA. This results in a FY 2017 national aggregate amount of \$391,419,000 to be distributed to states for TaOA. Information relating to TaOA funds in the FY 2017 Initial Allocation, by activity and amount, is provided in the sections below.

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<sup>1</sup>The statutory language in the Consolidated Appropriations Act, 2017, that authorizes these funds: *For payments during fiscal year 2017 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, \$849,000,000 together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15, 2017: Provided, That notwithstanding section 502 of this Act, 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)).*

<sup>2</sup>Funds provided under the FUBA appropriation for TaOA are available for expenditure for three fiscal years, i.e., FY 2017, FY 2018, and FY 2019. Funds provided under the FUBA appropriation for TRA, ATAA, and RTAA are available for expenditure for one fiscal year, i.e. through September 30, 2017. CSAs may refer to the FY 2017 TAA Annual Funding Agreement for additional information on the expenditure period for TaOA funds, and the UI Annual Funding Agreement for additional information on TRA and A/RTAA expenditure periods.

**7. FY 2017 National Aggregate TaOA Amount.** States must use funding allocated in the Initial Allocation to carry out TaOA consistent with TAA Program requirements and guidance. In determining the national aggregate amount available for TaOA, the Department has taken into account both the funds appropriated to continue the full operation of these programs and the application of sequestration, which results in the national aggregate amounts for TaOA as follows:

- \$391,419,000<sup>3</sup> is the FY 2017 national aggregate amount available for expenditures for TaOA which, as defined in section 3 above, includes funds for training, job search allowances, relocation allowances, employment and case management services, and related state administration.

Of the FY 2017 TaOA national aggregate amount, CSAs must adhere to the limitations on expenditures for related state administration and employment and case management services as follows:

- \$39,141,900 (or 10 percent of \$391,419,000) is the portion of FY 2017 TaOA funds available for related state administration. This amount represents the *maximum* amount of FY 2017 funds that a state is allowed to use for expenditures for related state administration. This 10 percent maximum was established to ensure that states have sufficient resources to provide continuity of service for the programs specified in TEGL No. 05-15, Change 1, Attachment A, Section D.1. *Note: A state may NOT use more than 10 percent of its FY 2017 TaOA allocation for costs related to state administration. However, a state may use a portion of these funds available for state administration for training, if needed, if not needed for state administration.*
- A national aggregate amount of \$19,570,950 (or 5 percent of \$391,419,000) is the *minimum* amount that must be used to provide employment and case management services to TAA Program participants certified under the 2009 Program, the 2011 Program, and the 2015 Program. FY 2017 TaOA 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 services to which workers under those programs are entitled, as specified in TEGL No. 05-15, Change 1, Attachment A, Section G. *Note: A state may use more than the five percent (minimum) of the amount allocated to it for TaOA to provide TAA-funded employment and case management services if the state determines that more funds are needed to provide such services to adversely affected workers in its state.*

**8. FY 2017 Initial Allocation TaOA Funds - State Amounts.** The Department has determined the FY 2017 Initial Allocation of TaOA funds to states based on the regulations at 20 CFR 618.910 through 618.940. These regulations provide for an Initial Allocation for a fiscal year to total 65 percent of the TaOA funds available for that fiscal year. Due to the delay in the FY

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<sup>3</sup> Of the FY 2017 national aggregate TaOA amount, the Department distributed \$241,700 in response to requests for reserve funds received before the Initial Allocation: \$181,000 to Alaska and \$60,700 to North Dakota. Therefore, the starting point national aggregate amount for determining the FY 2017 TaOA Initial Allocation state amounts, is \$391,177,300.

2017 appropriation, the Department will combine the Initial Allocation, described in 20 CFR 618.910, and Second Distribution, provided for in 20 CFR 618.930, to make a single allocation of 90 percent of the FY 2017 TaOA funds (in this guidance this will be referred to as the Initial Allocation.) This approach assures CSAs the funds needed to operate the TAA Program as soon as possible after the 2017 appropriation became available and that the statutory requirement, 90 percent of total TaOA funds distributed by July 15 of the fiscal year, is met. After this distribution, approximately 10 percent of FY 2017 TaOA funds will remain available for states requesting funds through the process for requesting reserve funds described in Section 9.B. below.

Specifically, for FY 2017, the amounts to be provided in the Initial Allocation are determined by applying the following provisions:

- Ninety (90) percent of the fiscal year funds, or \$352,059,570, will be distributed by formula under this allocation with the remaining 10 percent of the FY 2017 appropriated funds held in reserve for distribution by the end of the fiscal year (or to be provided to a state in need of reserve funds as provided in 20 CFR 618.920 and described below);
- The *hold harmless* provision minimum allocation for the Initial Allocation, provided for at 20 CFR 618.910(c) 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; and
- The formula factors the Department must consider in determining the apportionment of the Initial Allocation of funds specified in 20 CFR 618.910(f) and further described below in Section 9.A.

### **9. Application of the Funding Formula and Process for Requesting Reserve Funds.**

Attachment A to this TEGL provides the amounts of FY 2017 TaOA 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 2016 Quarter 3 through FY 2017 Quarter 2) 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 2016 Quarter 3 through FY 2017 Quarter 2) 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 2017, the weight will be 25 percent of the total for each factor.

The Department will determine each state's percentage of the national aggregate amount 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), if a state's allocation amount based upon this calculation is less than \$100,000, the allocation amount 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 2017 amounts 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 9B below.

**B. Process for Requesting TaOA Reserve Funds:** States may request TaOA reserve funds in accordance with 20 CFR 618.920(b) at any time during this fiscal year. States must use the Reserve Funding Request Form ETA-9117 (OMB No. 1205-0275) to request these funds.

To be eligible for TaOA reserve funds, a state must demonstrate that at least 50 percent of TaOA 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 through the end of the fiscal year; and
- The remaining funds the state has available for TaOA.

**10. Recapture and Reallotment of TaOA Funds.** Section 245(c) of the Trade Act, in conjunction with the language cross-referencing that section contained in the Consolidated Appropriations Act, 2017, Division H, Title I, under the FUBA heading, provides authority for the Department to recapture unobligated TaOA 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 reallot those funds to other states to provide and administer TaOA. The Department will implement Section 245(c) by establishing procedures for recapture of these funds and realloting them to meet state funding needs for TaOA, as specified in TEGL No. 5-15, Change 1, Attachment A, Section D.1.1, and will issue guidance at a future date.

**11. 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.

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

**13. Attachment.** TAA FY 2017 Initial Allocation of TaOA Fund Amounts by State