

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
AMERICAN JOB CENTER LEADS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Fiscal Year (FY) 2013 State Initial Allocations and the Process for
Requesting Trade Adjustment Assistance (TAA) Program Reserve Funds

1. Purpose. To provide State Workforce Agencies or agencies designated by Governors as “Cooperative State Agencies” (CSAs) (also jointly referred to as “states”) with the formula methodology the Department of Labor (Department, or We) used to develop the FY 2013 initial allocation, and to describe the process by which states may request TAA program reserve funds. The term “Program Funds,” used below, refers to the funds appropriated for states to provide Training, Employment and Case Management Services, Job Search Allowances, and Relocation Allowances, including the State Administration of these benefits and services to trade-affected workers.

2. References.

- Chapter 2 of Title II of the Trade Act of 1974, as amended (Pub. L. 93-618) (1974 Act and, as amended, Trade Act);
- 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);
- 20 CFR part 618;
- Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA or Sequestration) (Pub. L. 99-177);
- Budget Control Act of 2011 (BCA) (Pub. L. 112-25);
- American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112-240);
- Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113-6);

RESCISSIONS None	EXPIRATION DATE Continuing
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- Training and Guidance Letter (TEGL) No. 1-10, *Promulgation of 20 CFR Part 618 Trade Adjustment Assistance: Merit Staffing of State Administration and Allocation of Training Funds to States*; and
- TEGL No. 10-11, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)*.

3. Background. The Trade Adjustment Assistance Extension Act (TAAEA) reauthorized and substantially changed the TAA program. Specifically, the TAAEA amended section 236(a)(2)(A) of the Trade Act to establish a \$575 million annual consolidated cap on TAA funding for FY 2012 and 2013 Program Funds, and established a \$143,750,000 cap for this funding for the first quarter of FY 2014 (October 1, 2013 through December 31, 2013). The TAAEA did not amend section 236(a)(2)(B) and (C) of the Trade Act governing the allocation of funds, which:

- Requires 65 percent of the funds to be distributed by formula at the beginning of the FY, with 35 percent of the FY funds held in reserve for distribution later in the FY;
- Provides a “hold harmless” minimum allocation for the initial distribution to ensure that a state receives at least 25 percent of the state’s initial allocation for the previous FY;
- Sets a deadline of July 15 of each FY for the distribution of 90 percent of the funds; and
- Establishes specific formula factors that the Department must consider in determining the apportionment of the initial distribution of funds.

Sequestration’s Impact on the FY 2013 TAA Funding Level:

The Budget Control Act of 2011 (BCA) amended the Balanced Budget and Emergency Deficit Control Act (BBEDCA) to require reductions in budgetary authority, known as sequestration, beginning on January 2, 2013, unless Congress passed and the President signed a bill reducing the deficit by at least \$1.2 trillion over 10 years. The American Taxpayer Relief Act of 2012 (ATRA) amended the BBEDCA to delay the sequestration implementation date from January 2, 2013, to March 1, 2013. As required by the BBEDCA, as amended by ATRA, the President issued a sequestration order on March 1, 2013. The Office of Management and Budget (OMB) issued its Report to Congress on the sequestration for FY 2013, which provides calculations of the amounts and percentages by which various budgetary resources are required to be reduced, and a listing of the reductions required for each non-exempt budget account. The TAA program is included in the Federal Unemployment Benefits and Allowances (FUBA) Appropriation and is referred to as a Nondefense Mandatory Appropriation in the report, which can be found at: http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjsequestrationreport.pdf.

The BBEDCA, as amended, exempts some programs, projects, activities (PPAs) and accounts, and requires separate percentage reductions to be applied to non-exempt discretionary and mandatory PPAs. The TAA Program is part of a mandatory PPA to which the sequestration order applies. However, nothing relating to sequestration, or any subsequent guidance changed the methodology or formula for calculating the distribution of available Program Funds. Further,

the process by which states may request reserve funds was unchanged. Therefore, we continue to apply the regulations codified at 20 CFR 618.900- 618.940 to implement section 236(a)(2)(B) and (C) of the Trade Act, to the distribution of FY 2013 Program Funds.

4. FY 2013 Distribution of Initial Allocation of TAA Funds and the Process for Requesting Reserve Funds. The Consolidated and Further Continuing Appropriations Act, 2013 appropriated a total of \$575 million for FY 2013 Program Funds, as well as funds for Alternative/Reemployment Trade Adjustment Assistance (A/RTAA) and Trade Readjustment Allowances (TRA), all of which were subject to a 5.1 percent reduction under the BBEDCA, as amended. However, the Department was allowed to apply the full reduction only to TAA Program Funds, and therefore did not apply the reduction to funds appropriated for A/RTAA and TRA benefits. Our financial analysis indicated that states currently have sufficient funds available for training, employment and case management services, and job search and relocation allowances. Accordingly, \$534,353,000 in appropriated TAA Program Funds is available for distribution to states for FY 2013.

The Department announces the amount of each state's initial allocation of funds in the Attachment to this TEGL. Due to the delay in the FY 2013 appropriation and the need to determine the amount of those funds available under the sequestration order, the Department will make a single allocation of 90 percent of the full year appropriation of TAA Program Funds in accordance with the regulations found at 20 CFR 618.910 and 618.930. If a state needs further funds, it may request such funds by following the process for requesting reserve funds described below.

We determined the initial allocation for each state on the basis of the amount appropriated for TAA Program Funds as reduced by the sequestration amount for all TAA benefits and the amount distributed to the state of Hawaii in response to its reserve fund request. Hawaii has submitted the only reserve request for FY 2013 TAA Program funds. This request, in the amount of \$300,000, reduces the amount of TAA Program Funds available for distribution to states to \$534,053,000.

A. Formula for Calculating State Initial Allocation Amounts. The state initial allocation amounts listed in the Attachment were derived using the formula factors described in 20 CFR 618.910, and apply to 90 percent of the total \$534,053,000 of TAA Program Funds available for FY 2013. The Department will consider the remaining 10 percent to be held in "reserve" for distribution to the states later in FY 2013. These funds will be distributed on an as-needed basis in response to reserve fund requests by the states. This will provide needed funds to states that: 1) experience large, unexpected layoffs; 2) did not receive an initial allocation (District of Columbia, Hawaii, and Wyoming); and 3) demonstrate need for funds to provide training, employment and case management services, job search or relocation allowances, and administration of these benefits that were not met by the initial allocation.

The Initial Allocation of 90 percent of TAA Program funds among the states follows the four factors set forth in section 236(a)(2)(C)(ii) of the Trade Act, and explained in 20 CFR 618.910(f), which are:

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 FY; and
4. Estimated amount of funding needed to provide approved training to such workers during the FY.

Factor 1 was established using the most recent four quarters (FY 2012 Quarter 2 through FY 2013 Quarter 1) of data for the estimated number of certified workers by state, then weighting this quarterly data by 40 percent, 30 percent, 20 percent, and 10 percent, respectively, from the most recent quarter to the earliest quarter. This approach established 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 2012 Quarter 2 through FY 2013 Quarter 1) of data for workers participating in training by state, and weighting these quarters by 40 percent, 30 percent, 20 percent, and 10 percent, respectively, from the most recent quarter to the earliest quarter. As with Factor 1, this approach established a trend, giving the most recent quarters a greater impact on each factor than an earlier quarter.

Factor 3 was calculated 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 for the state. The average training cost was calculated by dividing total training expenditures for the most recent four quarters (FY 2012 Quarter 2 through FY 2013 Quarter 1) by the average number of training participants for the same time period.

Once all of the four factors were determined for each state, all four factors were assigned an equal weight, in accordance with 20 CFR 618.910(f)(3). For FY 2013, the weight assigned will be 25 percent of the total for each factor. The "hold harmless" provision, 20 CFR 618.910(c), requires that a state's initial allocation be

equal to at least 25 percent of the amount of that state's initial allocation in the most recent previous fiscal year.

The Department determined 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, the Department determined the unadjusted percentage that the state would receive of the amount available for initial allocations. As provided in 20 CFR 618.910 (c) - (e), the Department removed allocations under \$100,000 and applied the 25 percent "hold harmless" minimum amount to the state's allocation, resulting in an adjusted FY 2013 allocation for the remaining states.

In those instances where application of the formula resulted in a state receiving less than \$100,000, 20 CFR 918.910(e)(2)(i) provides that that state will not receive any initial allocation, but may request TAA reserve funds in accordance with the procedures described below in Section B, where needed.. For the FY 2013 initial allocation listed on Attachment A, only the District of Columbia, Hawaii, and Wyoming do not receive an initial allocation.

B. TAA Reserve Funds. States may request reserve funds to cover the costs of Training, Job Search Allowances and Relocation Allowances, Employment and Case Management Services and State Administration of these benefits. Reserve funds will be distributed to states in accordance with 20 CFR 618.920. These funds must be requested using the Form Employment and Training Administration (ETA)-9117 (OMB No. 1205-0275).

In order to be eligible to receive TAA reserve funds, a state must demonstrate one of the following: that 1) at least 50 percent of its total available Program Funds have been expended; 2) it needs more funds to meet unusual or unexpected events; or 3) it did not receive funds under the distribution of the initial allocation and needs funds to meet program needs. 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 addresses at least the following data:

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

5. Use of Funds. A state's allocation of FY 2013 Program Funds, like the allocation of FY 2012 Program Funds, will be provided in a single grant which may be used to pay the costs for the provision of Training, Job Search Allowances, Relocation Allowances, and Employment and Case Management Services, including State Administration of these benefits. Use of the FY 2013 funds is subject to the following restrictions:

- State Administration. As provided by section 235A(1) of the Trade Act, not more than 10 percent of a state's allocation may be used for administration of the TAA

program. The definition of State Administration has not changed, and continues to include costs that would previously have been charged to the administration grant. This includes the necessary and reasonable costs of administering TAA Training, Job Search Allowances, Relocation Allowances, and Employment and Case Management Services, and may include the administrative costs associated with processing waivers of the training requirement, collecting, validating and reporting data, and providing Reemployment Trade Adjustment Assistance or Alternative Trade Adjustment Assistance.

- Employment and Case Management Services. Under section 235A(2) of the Trade Act, at least 5 percent of the funds received must be used to provide Employment and Case Management Services. Therefore, a state may use more than 5 percent of its allocation to provide Employment and Case Management Services if it determines that greater funds are needed to provide such services to trade-affected workers in its state.

6. Reallotment of TAA Funds. The TAAEA amended section 245 of the Trade Act to add paragraph (c), “Reallotment of Funds,” which provides authority for the ETA to reallot unobligated TAA funds from states that have not obligated their funding fully in the second and third FY (after the FY in which we provided the funds to them) to states with a demonstrated need for the funds to carry out the TAA Program. Consistent with the Trade Act and the TAA FY 2013 Annual Cooperative Financial Agreement, funds provided in the distribution of the initial allocation or any later distribution (including funds distributed to states in response to reserve fund requests) may be deobligated in the event of underutilization. Underutilized funds will be deobligated and reallotted only after consultation with, and subsequent notification to, the affected states. The Department will provide further guidance on the reallotment of funds before exercising this authority.

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

8. Inquiries. States should direct all inquiries to the appropriate ETA Regional Office.

9. Attachment. Distribution of Initial Allocation of FY 2013 TAA Program Funds to States