

misrepresentation or willful nondisclosure of facts.

Public announcements on convictions and resulting penalties for fraud are generally considered necessary as a deterrent to other persons, and to inform the public that the agency is carrying on an effective program to prevent fraud. This alone is not considered adequate publicity. It is important that information be circulated which will explain clearly and understandably the claimant's rights, and the obligations which he must fulfill to be eligible for benefits. Leaflets for distribution and posters placed in local offices are appropriate media for such information.

*7515 *Evaluation of Alternative State Provisions with Respect to Erroneous and Illegal Payments.* If the methods of administration provided for by the State law do not conform to the suggested methods of meeting the requirements set forth in section 7511, but a State law does provide for alternative methods of administration designed to accomplish the same results, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effect of the alternative methods of administration. If the Bureau concludes that the alternative methods satisfy the criteria in section 7513, it will so notify the State agency. If the Bureau does not so conclude, it will submit to the Secretary the results of the study for his determination of whether the State's alternative methods of administration meet the criteria.

[51 FR 45848, Dec. 22, 1986. Redesignated at 59 FR 943, Jan. 6, 1994]

PART 618—TRADE ADJUSTMENT ASSISTANCE UNDER THE TRADE ACT OF 1974, AS AMENDED

Subpart A–G [Reserved]

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SOURCE: 75 FR 17000, Apr. 2, 2010, unless otherwise noted.

Subpart A–G [Reserved]

Subpart H—Administration by Applicable State Agencies

AUTHORITY: 19 U.S.C. 2320; Secretary's Order No. 03–2009, 74 FR 2279, Jan. 14, 2009.

§ 618.890 Merit staffing.

(a) *Merit-based State personnel.* The State must, subject to the transition period in paragraph (b) of this section, engage only State government personnel to perform Trade Adjustment Assistance (TAA)-funded functions undertaken to carry out the worker adjustment assistance provisions of the Trade Act of 1974, as amended, and must apply to such personnel the standards for a merit system of personnel administration applicable to personnel covered under 5 CFR part 900, subpart F.

(b) *Transition period.* A State not already in compliance with the merit system requirement of paragraph (a) of this section must comply by December 15, 2010.

(c) *Exemptions for States with employment service operation exemptions.* A State whose employment service received an exemption from merit staffing requirements from the Secretary of Labor (Secretary) under the Wagner-Peyser Act will retain an exemption from the requirements of paragraph (a) of this section. The exemption does not apply to the State's administration of trade readjustment allowances which remain subject to the requirements of paragraph (a) of this section. To the extent that a State with an authorized ES exemption provides TAA-funded services using staff not funded under the Wagner-Peyser Act, the exemption in this paragraph does not apply, and they remain subject to the requirements of paragraph (a) of this section.

(d) *Exceptions for non-inherently governmental functions.* The requirements of paragraph (a) of this section do not prohibit a State from outsourcing functions that are not inherently governmental, as defined in Office of Management and Budget (OMB) Circular No. A–76 (Revised), in any supplemental OMB guidance or superseding authority, and in DOL guidance.

Subpart I—Allocation of Training Funds to States

AUTHORITY: 19 U.S.C. 2320; 19 U.S.C. 2296(g); Secretary's Order No. 03-2009, 74 FR 2279, Jan. 14, 2009.

§ 618.900 Annual training cap.

The total amount of payments that may be made for the costs of training will not exceed the cap established under section 236(a)(2)(A) of the Trade Act.

(a) For each of the fiscal years 2009 and 2010, this cap is \$575,000,000; and

(b) For the period beginning October 1, 2010, and ending December 31, 2010, this cap is \$143,750,000.

§ 618.910 Distribution of initial allocation of training funds.

(a) *Initial allocation.* The initial allocation for a fiscal year will total 65 percent of the training funds available for that fiscal year. The Department of Labor (Department) will announce the amount of each State's initial allocation of funds in accordance with the requirements of this section at the beginning of each fiscal year. The Department will determine this initial allocation on the basis of the full amount of the training cap for that year, even if the full amount has not been appropriated to the Department at that time.

(b) *Timing of the distribution of the initial allocation.* The Department will, as soon as practical after the beginning of each fiscal year, distribute the initial allocation announced under paragraph (a) of this section. However, the Department will not distribute the full amount of the initial allocation until it receives the entire fiscal year's appropriation of training funds. If the full year's appropriated amount of training funds is less than the training cap, then the Department will distribute 65 percent of the amount appropriated.

(c) *Hold harmless provision.* Except as provided in paragraph (d) of this section, in no case will the amount of the initial allocation to a State in a fiscal year be less than 25 percent of the initial allocation to that State in the preceding fiscal year.

(d) *Minimum initial allocation.* If a State has an adjusted initial allocation

of less than \$100,000, as calculated in accordance with paragraph (e)(2) of this section, that State will not receive any initial allocation, and the funds that otherwise would have been allocated to that State instead will be allocated among the other States in accordance with this section. A State that does not receive an initial distribution may apply under § 618.920(b) for reserve funds to obtain the training funding that it requires.

(e) *Process of determining initial allocation.* (1) The Department will first apply the factors described in paragraph (f) of this section to determine an unadjusted initial allocation for each State.

(2) The Department will then apply the hold harmless provision of paragraph (c) of this section to the unadjusted initial allocation, as follows:

(i) A State whose unadjusted initial allocation is less than its hold harmless amount but is \$100,000 or more, will have its initial allocation adjusted up to its hold harmless amount. If a State's unadjusted allocation is less than \$100,000, the State will receive no initial allocation, in accordance with paragraph (d) of this section. Those funds will be shared among other States as provided in paragraph (e)(3) of this section.

(ii) A State whose unadjusted initial allocation is no less than its hold harmless threshold will receive its hold harmless amount and will also receive an adjustment equal to the State's share of the remaining initial allocation funds, as provided in paragraph (e)(3) of this section.

(3) The initial allocation funds remaining after the adjusted initial allocations are made to those States receiving only their hold harmless amounts, as described in paragraph (e)(2)(i) of this section, will be distributed among the States with unadjusted initial allocations that were no less than their hold harmless amounts, as described in paragraph (e)(2)(ii) of this section (the remaining States). The distribution of the remaining initial allocation funds among the remaining States will be made by reapplying the calculation in paragraph (f) of this section. This recalculation will disregard

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States receiving only their hold harmless amount under paragraph (e)(2)(i) of this section, so that the combined percentages of the remaining States total 100 percent.

(f) *Initial allocation factors.* (1) In determining how to make the initial allocation of training funds, the Department will apply, as provided in paragraph (f)(3) of this section, the following factors with respect to each State:

(i) The trend in the number of workers covered by certifications of eligibility during the most recent four consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(ii) The trend in the number of workers participating in training during the most recent four consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(iii) The number of workers estimated to be participating in training during the fiscal year. The estimate will be calculated by dividing the weighted average number of training participants for the State determined in paragraph (f)(1)(ii) of this section 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; and

(iv) The amount of funding estimated to be necessary to provide approved training to such workers during the fiscal year. The estimate will be calculated by multiplying the estimated number of participants in paragraph (f)(1)(iii) of this section 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.

(2) The Department may use such other factors that it considers appropriate.

(3) The Department will assign each of the factors listed in paragraphs (f)(1)(i) through (f)(1)(iv) of this section an equal weight. For each of these weighted factors, the Department will determine the national total and each State's percentage of the national total. Based on a State's percentage of each of these weighted factors, the Department will determine the percentage that the State will receive of the amount available for initial allocations. The percentages of initial allocation amounts calculated for all States combined will total 100 percent of initial allocation funds.

(4) The Department may, by administrative guidance published for comment, change the weights provided in paragraphs (f)(1) and (f)(3) of this section, or add additional factors. No such changes or additions will take effect before December 31, 2010.

§ 618.920 Reserve fund distributions.

(a) The remaining 35 percent of the training funds for a fiscal year will be held by the Department as a reserve. Reserve funds will be used, as needed, for additional distributions during the remainder of the fiscal year and for those States that do not receive an initial distribution. States may not receive reserve funds for TAA administration or employment and case management services without a request for training funds.

(b) A State requesting reserve funds must demonstrate that at least 50 percent of its training funds have been expended, or that it needs more funds to meet unusual and 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:

(1) The average cost of training in the State;

(2) The expected number of participants in training through the end of the fiscal year; and

(3) The remaining funds the State has available for training.

§ 618.930 Second distribution.

The Department will distribute at least 90 percent of the total training

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funds for a fiscal year to the States no later than July 15 of that fiscal year. The Department will first fund all acceptable requests for reserve funds filed before June 1. If there are any funds remaining to be distributed after these reserve fund requests are satisfied, those funds will be distributed to those States that received an initial allocation in an amount greater than their hold harmless amount, using the methodology described in § 618.910.

§ 618.940 Insufficient funds.

If, during a fiscal year, the Department estimates that the amount of funds necessary to pay the costs of approved training will exceed the training cap under § 618.900, the Department will decide how the amount of available training funds that have not been distributed at the time of the estimate will be allocated among the States for the remainder of the fiscal year. That decision will be communicated through administrative notice.

PARTS 619–621 [RESERVED]

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

Sec.

- 625.1 Purpose; rules of construction.
- 625.2 Definitions.
- 625.3 Reemployment assistance.
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- 625.17 Announcement of the beginning of a Disaster Assistance Period.
- 625.18 Public access to Agreements.

625.19 Information, reports and studies.

625.20 [Reserved]

625.30 Appeal Procedures for Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands.

APPENDIX A TO PART 625—STANDARD FOR CLAIM FILING, CLAIMANT REPORTING, JOB FINDING, AND EMPLOYMENT SERVICES

APPENDIX B TO PART 625—STANDARD FOR CLAIM DETERMINATIONS—SEPARATION INFORMATION

APPENDIX C TO PART 625—STANDARD FOR FRAUD AND OVERPAYMENT DETECTION

AUTHORITY: 42 U.S.C. 1302; 42 U.S.C. 5164; 42 U.S.C. 5189a(c); 42 U.S.C. 5201(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4988); Secretary's Order No. 4-75 (40 FR 18515).

SOURCE: 42 FR 46712, Sept. 16, 1977, unless otherwise noted.

§ 625.1 Purpose; rules of construction.

(a) *Purpose.* Section 410 of “The Robert T. Stafford Disaster Relief and Emergency Assistance Act” amended the program for the payment of unemployment assistance to unemployed individuals whose unemployment is caused by a major disaster, and to provide reemployment assistance services to those individuals. The unemployment assistance provided for in section 410 of the Act is hereinafter referred to as Disaster Unemployment Assistance, or DUA. The regulations in this part are issued to implement sections 410 and 423 of the Act.

(b) *First rule of construction.* Sections 410 and 423 of the Act and the implementing regulations in this part shall be construed liberally so as to carry out the purposes of the Act.

(c) *Second rule of construction.* Sections 410 and 423 of the Act and the implementing regulations in this part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

(d) *Effectuating purpose and rules of construction.* (1) In order to effectuate the provisions of this section, each State agency shall forward to the United States Department of Labor, on