

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL OTAA
	DATE July 12, 2012

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 1-12

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
ONE-STOP CENTER SYSTEM 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) 2012 Second Distribution of Trade Adjustment Assistance (TAA) Program Funding to States and the Process for Requesting TAA Program Reserve Funds

1. Purpose. To provide State Workforce Agencies or agencies designated by Governors as “Cooperating State Agencies” (CSAs) (also jointly referred to as “states”) with the formula methodology used in developing the FY 2012 Second Distribution of TAA program funds to states, which follows the FY 2012 Initial Allocation of funds, and to describe the process for states to use to request TAA program reserve funds for Training, Employment and Case Management Services, Job Search Allowances, and Relocation Allowances, including the State Administration of these benefits.

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;
- Training and Employment Guidance Letter (TEGL) No. 11-02, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002*, and its Changes 1; 2, and 3;
- 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*;

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

- 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); and*
- TEGL No. 13-11, *Fiscal Year (FY) 2012 State Initial Allocations and the Process for Requesting Trade Adjustment Assistance (TAA) Program Reserve Funds.*

3. Background. On October 21, 2011, President Obama signed the TAAEA into law. The TAAEA reauthorized and made substantial changes to the TAA program as explained in TEGL No. 10-11. The TAAEA amended Section 236(a)(2)(A) of the Trade Act to establish a \$575 million annual cap (appropriation) on TAA funding for Training, Job Search Allowances and Relocation Allowances, Employment and Case Management Services, including State Administration of these benefits for both FY 2012 and FY 2013, 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 fiscal year funds to be distributed by formula as soon as practicable after the beginning of the fiscal year, with 35 percent of the fiscal year funds held in reserve for distribution later in the fiscal year;
- 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 fiscal year;
- Sets a deadline of July 15 for the distribution of 90 percent of the funds, referred to as the “Second Distribution”; and
- Establishes specific formula factors that the Department of Labor (Department or We) must consider in determining the apportionment of the initial distribution of funds.

We apply the regulations codified at 20 Code of Federal Regulations (CFR) 618.900 – 618.940 to govern the distribution of TAA funds appropriated to carry out sections 235 through 238 of the Trade Act. Nothing in the TAAEA or any later guidance changed the methodology or formula for calculating the distribution of these funds. Further, the process by which states may request reserve funds also is unchanged. On January 17, 2012, TEGL No. 13-11 announced the amount of the initial allocations to states of FY 2012 funds to be made when the Department received its full year appropriation, explained the formula methodology used to determine those allocations, and described the process for states to use to request TAA program funds before the distribution of those allocations and otherwise as needed, in accordance with 20 CFR 618.920. Since that time, the Department received its full year appropriation and distributed the initial allocation in accordance with the table provided in the attachment to TEGL No. 13-11.

4. Second Distribution. In accordance with section 236(a)(2)(B)(ii) of the Trade Act and 20 CFR 618.930, 90 percent of the full FY 2012 appropriation must be distributed to states by July 15, 2012. Therefore, after the Second Distribution, 10 percent of the FY 2012 appropriation will remain available until the end of the fiscal year, at which time these funds minus any acceptable reserve requests, will be distributed to states. States may request these funds, as needed, by following the instructions included below in section B of this TEGL, as provided under 20 CFR 618.920, the regulation governing reserve fund distributions.

We derived the total amount of the FY 2012 Second Distribution by using 90 percent of the FY 2012 appropriation, as the starting point, leaving 10 percent to be held in reserve for states that

may request reserve funds before the end of the fiscal year. Next, we subtracted the sum of the Initial Distribution and all acceptable reserve fund requests received by the Department on or before June 1, 2012 from this amount. The remaining amount was the total Second Distribution amount to be distributed by formula to states, as announced in Attachment A of this TEGL. The Second Distribution will be distributed to those states that received an Initial Allocation in an amount greater than their hold harmless amount, using the same methodology as used for the Initial Allocation set forth in 618.910 and explained below in section A.

A. Formula for Calculating State Second Distribution Amounts. We derived the Second Distribution funding amounts for each state using the formula factors described in 20 CFR 618.910. This formula uses the most recent four consecutive calendar quarters for which data from all states is available. These factors are:

1. The trend in number of workers covered by certifications during the most recent four consecutive calendar quarters for which data are available;
2. The trend in number of workers participating in training during the most recent four consecutive calendar quarters for which data are available;
3. The number of workers estimated to be participating in training during the fiscal year; and
4. The estimated amount of funding needed to provide approved training to such workers during the fiscal year.

We calculated Factor 1 using the most recent four quarters (FY 2011 Quarter 2 through FY 2012 Quarter 1) of data for certified workers by state, then weighing each quarter's 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.

We calculated Factor 2 using the most recent four quarters (FY 2011 Quarter 2 through FY 2012 Quarter 1) of data for certified 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 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.

We calculated Factor 3 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.

We calculated Factor 4 by multiplying the estimated number of participants in Factor 3 by the average training cost for the state. We calculated the average training cost by dividing total training expenditures for the most recent four quarters by the average number of training participants for the same time period.

Once each 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). Next, using each state's

percentage of each of these weighted factors, we determined the unadjusted percentage that the state will receive of the total Second Distribution amount. The dollar value of that percentage is presented on Attachment A.

B. TAA Reserve Funds. States may request reserve funds before the Final Distribution 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 on an as-needed basis in response to reserve fund requests to provide monies to those states that experience large, unexpected layoffs or otherwise have training needs that are not met by their initial allocation. These funds must be requested using the Form ETA-9117 (OMB No. 1205-0275).

In order to be eligible to receive TAA reserve funds, a state must demonstrate that at least 50 percent of its total funds have been spent or that it needs more funds to meet unusual or 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 addresses at least the following data:

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 that the state has available for training.

5. Use of Funds. A state's allocation under the Second Distribution of funds will be provided in a single lump sum to the state. These funds 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. Consistent with the FY 2012 Initial Allocation and as provided in the TAAEA, the Second Distribution includes State Administration funds. Use of the FY 2012 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 benefits funded by the allocation. 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, and validating and reporting data.
- Employment and Case Management Services. Under Section 235A(2) of the Trade Act, a state must use at least 5 percent of the funds to provide Employment and Case Management Services. A state may use more than 5 percent of its allocation to provide Employment and Case Management Services if it determines it needs more funds to provide those services to trade-affected workers in its state.

6. Recapture of TAA Funds. The TAAEA amended Section 245 of the Trade Act to add paragraph (c), "Reallotment of Funds," which provides authority for the Employment and Training Administration (ETA) to recapture unobligated TAA funds that were allotted to a state and that have not been fully obligated during the second and third year after the funds were

provided, and to reallocate those funds to states with a demonstrated pattern of need. Consistent with the TAAEA and the TAA FY 2012 Annual Cooperative Financial Agreement, funds provided in the Second Distribution or any subsequent allocation, including funds distributed to states in response to Reserve Fund requests, may be deobligated in the event of underutilization. Underutilized funds will be recaptured only after consultation with, and notification to, the state. We will provide further guidance about the recapture of funds.

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.** Fiscal Year 2012 Trade Adjustment Assistance Second Distribution of Funds, by State