

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Trade Adjustment Assistance
	CORRESPONDENCE SYMBOL OTAA
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 2-19

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: MOLLY E. CONWAY /s/
Acting Assistant Secretary

SUBJECT: Second Distribution of Fiscal Year (FY) 2019 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” (also jointly referred to as “states”) by specifying the FY 2019 Second Distribution of TaOA funding amounts to states; describing the formula methodology the Department of Labor (Department) used to calculate these amounts; and providing the process for states to request TAA Program reserve funds for TaOA. TaOA includes training, job search allowances, relocation allowances, employment and case management services, and related state administration.
2. **Action Requested.** States are required to implement the guidance set forth herein and must continue to administer the TAA Program in accordance with applicable regulations and administrative guidance, including Operating Instructions for the 2002 Program, the 2009 Program, the 2011 Program, and the 2015 Program. States must inform all appropriate staff of the contents of this guidance.
3. **Summary and Background.**
 - a) Summary - The Department distributes TaOA funding according to regulations at 20 CFR § 618.900 through 618.940, which provide, among other things, for an initial allocation according to a prescribed formula (the Initial Allocation), potential reserve fund distributions in response to state requests, and a “second distribution” of TaOA funds.

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The second distribution is implemented according to 20 CFR § 618.930, which provides that at least 90 percent of the funds appropriated for TaOA must be distributed by July 15 of the FY (the Second Distribution) according to the prescribed formula, which specifies distribution of such funds to those states that received an Initial Allocation. The remaining 10 percent of FY TaOA funds not distributed in the Second Distribution will be distributed to states before the end of the FY. This Second Distribution, as described at 20 CFR § 618.930 is the subject of this TEGL.

- b) 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 TAA for Workers, 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. 12-18 describes provisions of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (Department of Labor Appropriations Act, 2019), Division B, Title I (Pub. L. 115-245), signed into law on September 28, 2018, governing the use of FY 2019 TaOA funds. States may use these funds to provide TaOA to workers certified 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 at the time of filing of a petition for certification. Please refer to TEGL No. 12-18 for the definitions of these programs.

Funds provided under the FY 2019 FUBA appropriation for TaOA are available for expenditure for three fiscal years (i.e., FY 2019, FY 2020, and FY 2021). Funds provided under the FUBA appropriation for Trade Readjustment Assistance (TRA), ATAA, and RTAA are available for expenditure for one fiscal year (i.e., through September 30, 2019). States may refer to the FY 2019 TAA Annual Funding Agreement and Notice of Award for additional information on the expenditure period for TaOA funds, and the Unemployment Insurance (UI) Annual Funding Agreement for additional information on TRA, ATAA, and RTAA expenditure periods.

TEGL No. 12-18 also describes the application of Sequestration, the FY 2019 National Aggregate TaOA amounts, the Initial Allocation and the process by which states may request TaOA reserve funds. Please refer to TEGL No. 12-18 for detailed information regarding these aspects of TaOA funding.

4. **Second Distribution of FY 2019 TaOA Funds.** In accordance with 20 CFR § 618.930, by July 15 of each FY, the Department will distribute at least 90 percent of the funds appropriated for the entire FY for TaOA to the states. To allow adequate processing of these funds, the Department interprets this requirement to mean that ETA will announce the amount of funds available to states in the Second Distribution by July 15 of each FY.

The Department will allocate any funds that remain after the Second Distribution to the states before the end of the fiscal year.

- a) FY 2019 Second Distribution State Amounts of TaOA Funds – The Department applies the same formula and methodology used to determine the state amounts of TaOA funds in the FY 2019 Initial Allocation to determine the amounts available in the FY 2019 Second Distribution of TaOA funds. This formula and methodology are based on the regulations at 20 CFR §§ 618.910 through 618.940. For FY 2019, the amounts to be provided to states in the Second Distribution are set out in the Attachment to this TEGL and were determined by applying the provisions as described in 20 CFR § 618.910(f) which are 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 2018 Quarter 3 through FY 2019 Quarter 2) of data for certified workers by state, and the quarters will be weighted 40 percent, 30 percent, 20 percent, and 10 percent from the most recent to the earliest quarter. This approach will establish a trend, giving the most recent quarters a greater impact on the factor than earlier quarters.

Factor 2 will be established using the most recent four quarters (FY 2018 Quarter 3 through FY 2019 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 from the most recent quarter to the earliest quarter. As with Factor 1, this approach will establish a trend, giving the most recent quarters a greater impact on the factor than earlier quarters.

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. The next step in determining this factor is to multiply the resulting ratio by the projected national average of training participants for the fiscal year, using estimates from 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 2019, 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, the Department determined the unadjusted percentage that the state will receive of the total amount available for the Second Distribution.

B. States that did not Receive an Initial Allocation:

As TEGL No. 12-18 explains, consistent with 20 CFR § 618.910(e)(2)(i), in instances where the formula approach would give a state less than \$100,000, the state will not receive an Initial Allocation. In addition, as provided in 20 CFR § 618.930, only states that received an Initial Allocation may receive funds in the Second Distribution.

Those states that do not receive funds through the Initial Allocation or Second Distribution may request TAA Program TaOA reserve funds in accordance with 20 CFR § 620 and the procedures described in TEGL No. 12-18 and in Section 4.b. below. The Attachment to TEGL No. 12-18 identifies Alaska, Delaware, the District of Columbia, Nevada, and Wyoming as states that did not receive an FY 2019 Initial Allocation. After the Department issued that TEGL, Nevada requested, and the Department approved, \$225,000 in FY 2019 TaOA reserve funds.

C. TaOA Funds Available as of the Second Distribution:

The total amount of FY TaOA funds available in the Second Distribution is comprised of 90 percent of the aggregate amount for FY 2019 TaOA funds after sequestration or (90 percent of \$401,020,000)¹ minus the sum of the Initial Allocation (\$260,663,000), or \$100,255,000.

- 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.

¹ See section 4.b. of TEGL No. 12-18 for more information on the National Aggregate of TaOA funds and the application of sequestration for FUBA funds.

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.
- c) Recapture and Reallotment of TaOA Funds – Section 245(c) of the Trade Act 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 may 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.

5. **Inquiries.** Recipients should direct inquiries regarding this guidance to the appropriate Regional Office.

6. **References.**

a. References

- Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (Department of Labor Appropriations Act, 2019), Division B, Title I (Pub. L. 115-245), September 28, 2018;
- 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);
- The Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177) (BBEDCA), as amended by the Budget Control Act of 2011 (Pub. L. 112-25) (BCA), and further amended by The American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112-240);
- Trade Adjustment Assistance Reauthorization Act of 2015 (Pub. L. 114-27, Title IV) (TAARA 2015);
- 20 CFR part 618, Trade Adjustment Assistance, subpart I;
- Training and Employment Guidance Letter (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), and its Change 1* and;

- *TEGL No. 12-18, Initial Allocation of Fiscal Year (FY) 2019 Trade Adjustment Assistance (TAA) Training and Other Activities (TaOA) Funds and Process for Requesting TAA Reserve Funds.*

7. Attachment.

- Attachment I: FY 2019 TAA TaOA Second Distribution Amounts, By State