

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Trade Adjustment Assistance
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 12-18

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: Initial Allocation of Fiscal Year (FY) 2019 Trade Adjustment Assistance (TAA) Training and Other Activities (TaOA) Funds and 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 identifying the FY 2019 Initial Allocation of TaOA funding amounts to states; describing the formula methodology used by the Department of Labor (Department) 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 information provided herein sets out the national aggregate amount of FY 2019 TAA Program funds and also describes the allocation of funds, including the derivation of state amounts and the process states must use to request reserve funds for TaOA expenditures. States are encouraged to consult their Unemployment Insurance

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(UI) Annual Funding Agreements and appropriate Regional Office staff for instructions on the process for accessing FY 2019 Training Readjustment Allowances (TRA), Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment Assistance (RTAA) funds. Also, States are advised to refer to TEGL No. 13-18, which announces the TaOA grant funding process for the FY 2019 funding cycle. TEGL No. 13-18 also provides guidance on submitting the SF-424, Application for Federal Assistance, via www.grants.gov, which is required to apply for FY 2019 TaOA funds.

- 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 the Trade Adjustment Assistance for Workers (TAA), ATAA, and 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 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, appropriates FY 2019 funds to carry out the TAA Program. The Act includes an appropriation of \$790 million within the Department's Federal Unemployment Benefits and Allowances (FUBA) account¹ spread across three program activities: TaOA (\$450 million), TRA (\$301 million), and ATAA/RTAA (\$39 million). In addition, funds may be used to provide benefits and services to members of worker groups covered by a certification 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 such petition for certification.

Funds provided under the 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

¹ The statutory text in the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 that appropriates FUBA funds reads as follows: *For payments during fiscal year 2019 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, \$790,000,000 together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15, 2019: 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)).*

FUBA appropriation for 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 UI Annual Funding Agreement for additional information on TRA, ATAA, and RTAA expenditure periods.

4. Allocation and Process Details.

- a. Application of Sequestration – The Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended by the Budget Control Act of 2011 (BCA), requires a reduction for FY 2019 of 6.2 percent in budget authority for direct spending (sometimes referred to as “mandatory”) programs, which includes the TAA Program. The full appropriated amount of \$790,000,000 is reduced by 6.2 percent (or \$48,980,000), leaving a total appropriated amount of \$741,020,000 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 \$48,980,000 reduction, due to sequestration, to the funds available for TaOA, rather than applying reductions to each payment of TRA, ATAA, or RTAA. This results in a FY 2019 national aggregate amount of \$401,020,000 available for distribution to states for TaOA. Information relating to TaOA funds in the FY 2019 Initial Allocation, by activity and amount, is provided in the Sections below.
- b. FY 2019 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:
 - \$401,020,000 is the FY 2019 national aggregate amount available for expenditures for TaOA, which, as defined in Section 6.b below, includes funds for training, job search allowances, relocation allowances, employment and case management services, and related state administration.²
 - States must adhere to the requirements in Sec. 235A of the Trade Act that limit expenditures for related state administration and set out a minimum expenditure requirement for employment and case management services. The Sec. 235A expenditure requirements are as follows:
 - Of the TaOA funds made available to a state for the fiscal year, not more than 10 percent may be used for related state administration. This amount

² On a national aggregate basis, up to \$40,102,000 (or 10 percent of \$401,020,000) of FY 2019 TaOA funds may be expended on related state administration and a minimum of \$20,051,000 (or five percent of \$401,020,000) must be used for TAA employment and case management services.

represents the *maximum* amount of FY 2019 TaOA funds that a state is allowed to use for expenditures for related state administration. *Note: A state may NOT use more than 10 percent of its FY 2019 TaOA allocation for costs related to state administration. However, if needed, a state may use a portion of the funds available for state administration for training, provided the funds are not needed for state administration.*

- Of the TaOA funds made available to a state for the fiscal year, not less than five percent shall be used for TAA employment and case management services. The amount that constitutes five percent of the state's TaOA funds for FY 2019 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 2019 TaOA funds must not be used to provide employment and case management services to workers covered by petitions certified under the 2002 Program. This five percent minimum for employment and case management services ensures that TAA funds are available to provide the employment and case management services to which workers under those programs that provide for such services are entitled, as further 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.*

- c. FY 2019 Initial Allocation State Amounts of TaOA Funds – The Department determines the FY 2019 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. After this distribution, approximately 35 percent of FY 2019 TaOA funds will remain available, which the Department will distribute in subsequent distributions and to states that require reserve funds described in Section 4.d.B. below. Specifically, for FY 2019, the amounts to be provided in the Initial Allocation are determined by applying the following provisions:
 - 65 percent of the fiscal year funds available (or \$260,663,000) will be distributed by formula under this allocation with the remaining 35 percent of the FY 2019-appropriated TaOA funds held in reserve for distribution by July 15 and 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 4.d.A.
- d. Application of the Funding Formula and Process for Requesting Reserve Funds– Attachment I to this TEGl provides the amounts of FY 2019 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 2017 Quarter 4 through FY 2018 Quarter 3) 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 2017 Quarter 4 through FY 2018 Quarter 3) 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 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 2019 amounts for the remaining states. In 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 4.B.

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.

- e. 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 reallotting

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

6. **References and Definitions.**

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 (TGAAA) (Pub. L. 111-5);
- Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112-40) (TAAEA);
- The Balanced Budget and Emergency Deficit Control Act of 1985 (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);
- 20 CFR part 618, Trade Adjustment Assistance, subpart I;
- Unemployment Insurance Program Letter (UIPL) No. 01-19, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2019*;
- 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. 13-18, *Fiscal Year (FY) 2019 Trade Adjustment Assistance (TAA) Training and Other Activities (TaOA) Grant Management Guidance*.

b. 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 enrolled in full-time training.
- *Alternative Trade Adjustment Assistance (ATAA) and Reemployment Trade Adjustment Assistance (RTAA) Program Funds (A/RTAA)* 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.

7. Attachment.

- Attachment I: FY 2019 TAA TaOA Initial Allocation Amounts, By State