



***HEART OF TEXAS WORKFORCE DEVELOPMENT BOARD, INC.***

**ID NO.:** HWD 001-10      **DATE ISSUED** February 1, 2010

**PROGRAM:** ARRA, TAA, TWIST,      **KEYWORD:** Trade Adjustment program  
UI, WIA      requirements

**Subject:** Definition and limits on Employee Retention Bonuses for Employers

**Purpose:** To assist Contractors in implementing provisions of the Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009, which amend the Trade Adjustment Assistance (TAA) program. TGAAA makes sweeping changes to the TAA program, expanding TAA coverage to include workers and firms in service sectors and not just those producing a product, and affecting the following aspects of TAA administration:

- Eligibility
- Case management
- Application date
- Trade Readjustment Allowances
- Waiver of training requirement
- Training
- Training costs
- Transportation and subsistence costs for training
- Approval or denial of training
- Co-enrollment and multiple enrollment
- Reemployment Trade Adjustment Assistance
- Health Coverage Tax Credit
- Trade-affected workers from other states

**References:** Texas Workforce Commission WD Letter 52-09, Change 1

**Discussion:** In accordance with HWD 004-07 Change 2, entitled Policy Development and Approval by the Board, the attached WD Letter 52-09, Change 1 is wholly adopted and the Board shall *comply and conform to all requirements within that directive.*

**Effective Date:** February 1, 2010

## TEXAS WORKFORCE COMMISSION LETTER

<b>ID/No:</b>	WD 52-09, Change 1
<b>Date:</b>	February 2, 2010
<b>Keyword:</b>	Recovery Act; TAA; TWIST; UI; WIA
<b>Effective:</b>	Immediately

**To:** Local Workforce Development Board Executive Directors  
Commission Executive Offices  
Integrated Service Area Managers



**From:** Laurence M. Jones, Director, Workforce Development Division

**Subject:** Trade and Globalization Adjustment Assistance Act of 2009—*Update*

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### **PURPOSE:**

To assist Local Workforce Development Boards (Boards) in implementing provisions of the Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009, which amend the Trade Adjustment Assistance (TAA) program. TGAAA makes sweeping changes to the TAA program, expanding TAA coverage to include workers and firms in service sectors and not just those producing a product, and affecting the following aspects of TAA administration:

- Eligibility
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- Health Coverage Tax Credit
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**The Trade Adjustment Assistance Reemployment and Training Plan (previously Attachment 1 to WD Letter 52-09) has been updated in accordance with WD Letter 06-10, issued February 2, 2010, and entitled “Trade Adjustment Assistance: Statewide Commuting Area and Reasonable Cost of Training Standard.”**

**The updated Trade Adjustment Assistance Reemployment and Training Plan can be accessed on the Intranet at:**

**[http://intra.twc.state.tx.us/intranet/gl/html/trade\\_forms.html](http://intra.twc.state.tx.us/intranet/gl/html/trade_forms.html)**. *[Note: The Intranet site is not available to the general public.]*

#### **CHANGES TO WD LETTER 52-09:**

New information in this WD Letter is indicated by:

- A ~~strikethrough~~ of the original language, which indicates that language has been deleted; and
- **Bold** typeface, which indicates new or clarifying language.

#### **BACKGROUND:**

The TAA program was established by the Trade Act of 1974, and has been amended several times. TGAAA amended TAA on May 18, 2009.

Most of the TGAAA changes apply only to workers covered under Trade petitions filed with the U.S. Department of Labor on or after May 18, 2009, and with petition numbers greater than 70,000. Workers covered under Trade petitions filed before May 18, 2009, and with petition numbers less than 70,000, are still subject to TAA provisions under the Trade Act of 2002.

TGAAA's focus is early assessment and provision of occupational skills training that affords a participant a reasonable expectation of sustainable employment.

#### **PROCEDURES:**

In administering TAA, Boards must be aware of and adhere to the provisions of the following:

- Trade Act of 2002
- TGAAA
- Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009 (<http://wdr.doleta.gov/directives/attach/tegl/TEGL22-08acc.pdf>)

**NLF**

#### **Eligibility**

Boards must be aware that TGAAA expands coverage to workers who provide services as well as workers who produce products. Workers can be Trade certified if there is job loss due to foreign imports or a shift in production or service to any foreign country. Additionally, a trade-affected company downstream from a Trade-certified company for which the downstream company produces component parts or services also can be Trade certified if it is experiencing layoffs.

**NLF**

Boards must ensure that employers interested in filing a Trade petition are provided with information on how to file.

**NLF**

Boards must ensure that information on TGAAA's expanded TAA program eligibility is provided to employers when Boards receive notice of layoffs or future layoffs. NLF

### **Case Management**

Boards must ensure that early intervention services are a priority for TAA program participants. Early intervention services include the following: NLF

- Orientation
- Initial assessment of skills, language, education, aptitudes, and abilities
- Provision of labor market information, job search assistance, and financial management workshops

Because TGAAA's focus is on early assessment and early entry into training when appropriate, Boards must ensure that training request approvals are not delayed while determining eligibility for Workforce Investment Act (WIA) services. NLF

Boards must be aware that Texas Workforce Center staff funded by TAA administrative funds or other programs for which a Trade-certified worker is eligible can provide case management. NLF

Boards must ensure that:

- skills assessments evaluate whether a Trade-certified participant meets TAA training criteria or matches specific employment opportunities within the community;
- case managers provide Trade-certified participants the information and support necessary to help them achieve sustainable reemployment;
- case management services are available to Trade-certified participants over the course of their participation in TAA; and
- if there are no immediate employment opportunities, a reemployment plan (REP) is used to identify any skill gaps or job requirements, including remedial and prerequisite training that the Trade-certified participant requires to be job ready in a specific occupation.

**The Trade Adjustment Assistance Reemployment and Training Plan, is an REP for Boards' use, available on the Intranet at [http://intra.twc.state.tx.us/intranet/gl/html/trade\\_forms.html](http://intra.twc.state.tx.us/intranet/gl/html/trade_forms.html). Boards choosing to develop a local REP must ensure that it includes all of the elements in the Trade Adjustment Assistance Reemployment and Training Plan.** NLF

### **Application Date**

Effective immediately, Boards must ensure that the date on which a Trade-certified worker first contacts a Texas Workforce Center to request a TAA service is the date entered into The Workforce Information System of Texas (TWIST) TAA *Application Date* field. (Previously, the date entered into the *Application Date* field in the TAA *Program Summary* tab in TWIST was the date an individual received the first reportable TAA service.) NLF

The *Application Date* is now a reportable item, and Boards must ensure correct documentation in the TAA *Application Date* field in TWIST.

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### **Trade Readjustment Allowances**

Trade Readjustment Allowances (TRA) are support payments for trade-affected workers enrolled in TAA-approved training.

Boards must ensure that Texas Workforce Center staff is aware of the following:

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- Basic TRA is payable for 52 weeks minus the number of weeks of allowable unemployment insurance (UI) benefit payments;
- Under TGAAA, TRA requires that the Trade-certified participant:
  - be enrolled in TAA-approved training within 26 weeks of separation date or the Trade petition certification date—whichever is later; or
  - has a waiver of the training requirement;
- Under the Trade Adjustment Act of 2002, TRA requires enrollment in TAA-approved training, or a waiver of training, within:
  - eight weeks of petition certification date; or
  - sixteen weeks of the separation date—whichever is later;
- Basic TRA is exhausted when:
  - the Trade-certified participant receives the maximum benefit amount; or
  - two years from the separation date—whichever is earlier;
- To be eligible for additional TRA, the Trade-certified participant must be in TAA-approved training when basic TRA is exhausted; and
- If the Trade-certified participant is not enrolled in TAA-approved training when basic TRA is exhausted, eligibility for additional TRA is permanently lost.

Boards must ensure that Texas Workforce Center staff working with Trade-certified workers and participants is familiar with the levels of TRA, which are:

NLF

- basic;
- additional; and
- additional remedial/prerequisite.

Boards must be aware of the following changes to TRA under TGAAA:

NLF

- The potential length of TRA, along with UI, is extended from 104 weeks to 130 weeks.
- Additional remedial TRA (of up to 26 weeks) is now allowed if either remedial or prerequisite training is required.

### **Waiver of Training Requirement**

Boards must ensure that waivers of the TAA-approved training requirement for TRA are granted only for one of the following six reasons:

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1. Recall—The worker was notified that the affected company will recall the worker within six months.

2. Marketable skills—The worker possesses marketable skills for employment in a specific occupation, as determined by an initial assessment of the worker’s total job skills.

*Note:* “marketable skills” means that the worker a) possesses all the job skills necessary for a specific occupation with available jobs in the local commuting area (or an area to which the worker is willing to relocate); and b) is likely to be employed within 90 days. Marketable skills also can include the possession of a postgraduate degree or certification in a specialized field.

3. Retirement—The worker is within two years of being eligible for retirement under Social Security retirement benefits or a private pension sponsored by the employer or labor organization.
4. Health—The worker is unable to participate in training for health reasons.
5. Enrollment unavailable—The first available enrollment date for the TAA-approved training is within 60 days, or later if there are extenuating circumstances.
6. Training not available—TAA-approved training is not reasonably available to the worker from a public or private source, no suitable training is available for the worker at a reasonable cost, or no training funds are available in the state.

Boards must ensure that:

- the reason for granting a waiver of the training requirement is supported by documentation in the initial assessment of a Trade-certified worker’s job skills and circumstances;
- when a waiver of the training requirement is granted, contact with the Trade-certified participant occurs at least once every 30 days to determine if the circumstances for granting the waiver still exist;
- if the circumstances for granting the waiver no longer exist, the reason is changed or the waiver revoked; and
- when a waiver is granted, it is documented in TWIST immediately.

**NLF**

Because the focus of TAA is training and TGAAA has extended the TRA deadline to 26 weeks, Boards must be aware that instances when the granting of a waiver is necessary are expected to be few.

**NLF**

### **Training**

Boards must ensure that TAA training is not limited by any rule or policy beyond those directly applicable to TAA. The TAA program can fund:

- institutional training;
- remedial education;
- prerequisites for any training that may be TAA approved;
- distance or online training;
- on-the-job training;
- customized training; and
- Apprenticeship program training.

**NLF**

Because TGAAA specifically prohibits limiting TAA-approved training to Workforce Investment Act (WIA)-approved training, Boards must ensure that only the following six approval criteria and the following three other considerations of TAA are used as a basis for approving a Trade-certified worker's request for training or for recommending a denial of the request.

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Six criteria:

1. There is no suitable employment available.
2. The affected worker will benefit from training.
3. There exists a reasonable expectation of employment following training.
4. The training is reasonably available from a private or public school regulated by a state agency.
5. The Trade-certified worker is qualified to undertake and complete the training.
6. Training is available at both a reasonable cost and at the lowest cost available for the occupation.

Three other considerations:

1. All TAA training programs must be completed within 156 weeks.
2. A Trade-certified participant must not be required to pay any of the training costs, including student loans or any funds that must be repaid.
3. If the training program is part-time, the Trade-certified participant is informed that he or she will not receive TRA.

Boards must ensure that Trade-certified participants are informed that they will not receive TRA when a training program is part-time.

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Boards must ensure that case managers adhere to the following:

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- First consideration must be given to appropriate training available within the local commuting area.
- When considering a training program outside the local commuting area, the cost of necessary travel and subsistence must be considered as part of the cost of training when calculating the lowest-cost training available.
- Requests for TAA training from adversely affected incumbent workers must be considered for approval. (An adversely affected incumbent worker is one among a group of Trade-certified workers covered by a certification petition with a number greater than 70,000, who has not been totally or partially separated from adversely affected employment, but who is identified by the employer as threatened with total or partial separation.) Such requests must meet all TAA training approval criteria. If the threat of layoff is removed, then the training program must be terminated.
- Individual Trade-certified participants are allowed only one training program each under any one Trade certification. That training program must include all training required to afford the individual complete job readiness in a specific occupation. One training program may require more than one training component—e.g., English as a

Second Language, Adult Basic Education, or GED classes—and may require training at more than one institution. If it is determined after a training program begins that the training will not afford the Trade-certified participant complete job readiness, the program can be amended.

- A training program that will last longer than the Trade-certified participant's remaining TRA eligibility period must be approved only if the individual demonstrates a financial ability to complete the training after TRA eligibility is exhausted.
- Before approving a training program under TAA, a TAA REP must be completed. The REP must ensure that the Trade-certified participant will be entirely job ready at the completion of any approved training program.

### **Training Costs**

Boards must be aware of the following:

**NLF**

- In determining the reasonable cost of training, other public or private funds can be considered to lower the TAA program cost, such as:
  - scholarships;
  - employer financing; or
  - other nonpersonal funds that the Trade-certified participant does not have to repay.

However, Trade-certified workers cannot be required to use other public or private funds to lower the cost of training as a condition of training approval. If a Trade-certified worker volunteers to use other grant funds to supplement TAA training funds when the cost of training is otherwise not reasonable (and all other training approval criteria are met), the training program will be approved. There is not an automatic voucher for \$16,000 to spend on training for each Trade-certified participant. Approval goes to the lowest-cost available training for the occupation.

- The cost of a TAA-approved training program must include:
  - tuition;
  - books;
  - tools required to be purchased by all students taking the training;
  - academic fees;
  - travel and subsistence expenses when the training location is outside the local commuting area; and
  - any certification test or license required for the employment.

Boards must ensure they have a system in place to pay TAA-approved training providers—whether or not the providers are on the Statewide List of Eligible Training Providers.

**NLF**



### **Transportation and Subsistence Costs for Training**

Each Board must establish what the normal commuting distance is when defining local commuting areas. Boards will be notified if the state adopts a statewide measure of normal commuting distance.

NLF

Boards must ensure the following:

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- When the shortest distance from a Trade-certified participant's residence to the site of training is greater than the normal commuting distance, transportation and subsistence costs are provided as part of the overall TAA cost of approved training.
- Transportation and subsistence costs are the lesser of the:
  - actual cost; or
  - fifty percent of the federal per diem rate for the area in which training takes place.
- The actual mileage from a Trade-certified participant's residence to the training facility is verified.
- Transportation allowances provided for daily commuting do not exceed the amount payable using the alternative subsistence calculation (see **Trade Adjustment Assistance Reemployment and Training Plan** at [http://intra.twc.state.tx.us/intranet/gl/html/trade\\_forms.html](http://intra.twc.state.tx.us/intranet/gl/html/trade_forms.html) ).
- If a Trade-certified participant is staying at a training facility outside the local commuting area, only one round-trip payment is provided.
- Federal per diem rates are verified using the U.S. General Services Administration Web site at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_BASIC&contentId=17943](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=17943).
- If transportation and subsistence allowances are included in the TAA training program\*:
  - an application for subsistence is completed and retained in the applicant's file;
  - Boards make payments at the end of a training week, with the exception of the beginning of training;
  - Trade-certified participants submit attendance before receiving transportation and subsistence assistance; and
  - payments cannot be made for any unexcused absences.
- If training outside of the normal commuting area makes the cost of training unreasonable, a request for denial of training is submitted to the Commission's Trade Funded Services unit.

*\*Note:* Boards must assist Trade-certified participants with the initial payment, if needed, in order to begin training.

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### **Approval or Denial of Training**

Boards must ensure that a request for training from a Trade-certified worker is approved unless a recommendation for denial based on the six TAA approval criteria and three considerations is made to the Commission's Trade Funded Services unit.

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Boards must be aware that if a Trade-certified worker's request for training meets all federal TAA approval criteria, the request must be approved.

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Boards must be aware that they do not have the authority to deny a request for TAA training. Recommendations for denial must be sent to the Texas Workforce Commission's (Commission) Trade Funded Services unit.

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### **Coenrollment and Multiple Enrollment**

Under TGAAA, Boards must ensure that services available through WIA and other federal programs are offered to Trade-certified workers to the full extent that an individual Trade-certified worker is eligible.

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Coenrollment or multiple enrollment allows Trade-certified participants to receive support services that can assist in successful completion of training and a quicker transition to work. Trade-certified participants in training approved for TAA that cannot be approved for WIA can be enrolled under TWIST service code ***4-TWC Programs Supported by WIA 21-Case Management*** (category 14), **and while they** receive support services through WIA. ~~A new service code for this purpose will be added to TWIST as soon as possible.~~

### **Reemployment Trade Adjustment Assistance**

Boards must ensure that Trade-certified workers are informed of the following:

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- Reemployment Trade Adjustment Assistance (RTAA), a wage supplement program for Trade-certified participants who find employment paying less than their affected employment, has replaced Alternative Trade Adjustment Assistance (ATAA).
- While ATAA was a demonstration project, RTAA has the same expiration date as the rest of the TAA program.
- ATAA remains available to workers certified for ATAA under petitions filed prior to May 18, 2009.
- RTAA can be paid to Trade-certified participants working part-time while enrolled in TAA-approved training.
- RTAA cannot be paid to Trade-certified participants employed by their trade-affected employer.

### **Health Coverage Tax Credit**

Boards must be aware of the following:

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- Under TGAAA, the Internal Revenue Service still administers the Health Coverage Tax Credit (HCTC).
- The percentage of health premiums covered by the program is raised from 65 percent to 80 percent.

- Trade-certified participants eligible for HCTC are those who receive TRA for any day of a calendar month, and the subsequent month, or would have received the allowance if they had exhausted UI.
- TGAAA extends HCTC eligibility to Trade-certified participants who have a break in training of more than 30 days, but would otherwise have been eligible for TRA.

### **Affected Workers from Other States**

Trade-affected workers from other states will continue to relocate to Texas. Boards must be aware that TAA is a federal program and trade-affected workers have the right to seek TAA services in any state they choose.

**NLF**

Boards must ensure the following:

- The Commission's Trade Funded Services unit is contacted immediately when an individual's eligibility for the TAA program needs to be determined.
- If a waiver of the training requirement is granted, a copy of the waiver is sent to the Commission's Trade Funded Services unit.
- A training program for a Trade-certified worker from another state receives approval from the other state—routed through the Commission's Trade Funded Service unit—before the individual begins training.

**NLF**

### **INQUIRIES:**

Direct inquiries regarding this WD Letter to Dave Smith at (512) 936-2559 or [dave.smith@twc.state.tx.us](mailto:dave.smith@twc.state.tx.us).

### **RESCISSIONS:**

WD Letter 52-09

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### **REFERENCE:**

The Trade and Globalization Adjustment Assistance Act of 2009 [Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, Public Law (P.L. No. 111-5)]  
 The Trade Adjustment Act of 2002 (P.L. No. 107-210); 20 C.F.R. Part 617  
 The Trade Act of 1974, as amended (P.L. No. 93-618, as amended)  
 Certification of Eligibility to Apply for Worker Adjustment Assistance, 29 C.F.R. Part 90  
 U.S. Department of Labor Employment and Training Administration, Training and Employment Guidance Letter No. 11-02, issued October 10, 2002, and entitled "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002," with Changes 1, 2, and 3  
 U.S. Department of Labor Employment and Training Administration, Training and Employment Guidance Letter No. 22-08, issued May 15, 2009, and entitled "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009"  
 WD Letter 06-10, issued February 2, 2010, and entitled "Trade Adjustment Assistance: Statewide Commuting Area and Reasonable Cost of Training Standard"

### **FLEXIBILITY RATINGS:**

**No Local Flexibility (NLF):** This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by "must" or "shall."

**Local Flexibility (LF):** This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”