

**TEXAS WORKFORCE COMMISSION**  
**Workforce Development Letter**

<b>ID/No:</b>	WD 30-20
<b>Date:</b>	December 14, 2020
<b>Keyword:</b>	Rapid Response; TAA; TWIST; UI; WIOA
<b>Effective:</b>	Immediately

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

**From:** Courtney Arbour, Director, Workforce Development Division



**Subject:** Trade Adjustment Assistance (TAA) Final Rule

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**PURPOSE:**

The purpose of this WD Letter is to provide Local Workforce Development Boards (Boards) with guidance on the Trade Adjustment Assistance (TAA) final rule, published on August 21, 2020, including the following:

- New TAA definitions
- Petition filing
- Rapid Response
- Co-enrollment
- Assessments
- Individual Employment Plan (IEP)
- Waiver revocations
- Training approval criteria
- Training amendments
- Job search and relocation allowance
- Supplemental assistance
- TAA program funds

**BACKGROUND:**

The US Department of Labor (DOL) published the Final Rule implementing the Trade Adjustment Assistance Reauthorization Act of 2015 on August 21, 2020. The rule modernizes TAA program regulations by streamlining and consolidating 20 Code of Federal Regulations (CFR) parts 617 and 618 and 29 CFR part 90 into 20 CFR part 618, and by aligning the TAA program regulations with the Workforce Innovation and Opportunity Act (WIOA).

TAA is a federal entitlement program established by the Trade Act of 1974 (Trade Act) to assist workers adversely impacted by foreign trade. Workers who have lost their jobs because of their company’s decline in production or sales due to increased imports or the outsourcing of jobs to foreign countries are potentially eligible for TAA services and benefits. The Trade Act has been amended multiple times. Each iteration of the Trade Act contains different provisions of eligibility, benefits, services, and deadline dates. A trade-affected worker receives services and/or benefits based on the governing regulations in effect at the time the petition certifying the worker’s eligibility is filed, as outlined in the table below.

<b>Petition Number</b>	<b>Legislation</b>	<b>Applicable Rules and Directives</b>
85,000 and higher	Trade Adjustment Assistance Reauthorization Act of 2015	20 CFR §618
80,000 to 84,999	Trade Adjustment Assistance Extension Act of 2011	20 CFR §618
70,000 to 79,999	Trade and Globalization Adjustment Assistance of 2009	20 CFR §617 TEGL 22-08 and Change 1
50,000 to 69,999	Trade Adjustment Assistance Reform Act of 2002	20 CFR §617 TEGL 11-02 and Changes 1, 2, and 3
Below 50,000	Trade Act of 1974	20 CFR §617 Contact State Office

**PROCEDURES:**

**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.”

**NLF:** Boards must be aware that the TAA Guide, dated May 2020, is still in effect. When there is a conflict between the TAA Guide and this WD Letter, Boards must follow the WD Letter. Fully updated instruction for implementing the TAA Final Rule is forthcoming.

**New TAA Definitions**

**NLF:** Boards must ensure that the following new definitions are used when implementing the TAA program:

- **Adversely Affected Worker:** An individual, including an employer, who, because of lack of work in adversely affected employment, has been totally or partially separated

from such employment. A member of a worker group becomes an adversely affected worker or adversely affected incumbent worker only when the worker individually applies and is determined eligible for TAA program benefits and services.

- **Full-Time Training:** Training that meets the provider's full-time enrollment requirements. If in the last semester, the courses necessary to complete the approved training, even if it does not meet the training provider's normal definition of full-time training.
- **Group of Workers:** At least two workers employed or formerly employed by the same firm or an appropriate subdivision. This definition includes teleworkers and staffed workers.
- **Individual Employment Plan:** A revisable document containing an ongoing strategy, jointly developed by the trade-affected worker and the case worker, identifying the worker's employment goals and appropriate achievement objectives. The plan should include appropriate services to help the worker achieve his or her employment goals, objectives, and benchmarks while in training or receiving employment and case management services.
- **Lack of Work:** A situation in which the employer does not have work for the worker to perform or does not make that work available to the worker, including, but not limited to, circumstances when:
  - work is unavailable because the employer suspends or ceases operations or institutes a lockout; or
  - work is unavailable because the employer downsizes the workforce by means of attrition or layoff.
- **Layoff:** A suspension of or separation from employment by an employer for lack of work, initiated by the employer, and expected to be for a definite or indefinite period of time.
- **Suitable Employment:** Work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work that are not less than 80 percent of the worker's average weekly wage. Part-time, temporary, short-term, or threatened employment is not suitable employment.

### **Petition Filing**

**NLF:** Boards must be aware that the following entities may file a petition with DOL:

- A group of two or more workers
- An employer of the group of workers
- A union or other duly authorized representative
- A state or local agency representative at the Workforce Solutions Office's dislocated worker unit
- Rapid Response team members

### **Rapid Response**

**NLF:** Boards must provide Rapid Response assistance and appropriate career services, in accordance with the Rapid Response guide, to members of a group of workers for whom

a petition is filed. These services must be provided when the petition is filed, regardless of whether the petition is eventually certified.

**NLF**: Boards must ensure that Workforce Solutions Office staff provides additional appropriate services, including co-enrollment in WIOA, to assist workers with finding employment or gaining skills for reemployment as quickly as possible.

**NLF**: Boards must ensure that Workforce Solutions Office staff provides an individual Rapid Response orientation and completes all TWIST data entry if a worker does not attend a Rapid Response event before certification.

### **Co-enrollment**

**NLF**: Boards must be aware that:

- trade-affected workers meet the definition of a dislocated worker under WIOA if they meet Selective Service requirements; and
- expedited eligibility for the WIOA Dislocated Worker (DW) program is available for trade-affected workers.

**NLF**: Boards must be aware that 20 CFR §618.325(a)(1) requires co-enrollment of all trade-affected workers in the DW program if a trade-affected worker is eligible for the DW program. In general, the TAA program pays for all training and related costs as well as most of the employment and case management services.

**NLF**: Boards must ensure that Workforce Solutions Office staff:

- makes trade-affected workers aware that they are being co-enrolled in the WIOA DW program; and
- fully documents when a trade-affected worker declines co-enrollment and other reasons why co-enrollment did not occur. A trade-affected worker may decline co-enrollment, and this declination has no effect on his or her eligibility for benefits and services under the TAA program.

**NLF**: Boards must ensure that Workforce Solutions Office staff notifies the state office at [taa@twc.texas.gov](mailto:taa@twc.texas.gov) if a customer refuses co-enrollment. State office staff will review and verify, if necessary, the reasons for refusal.

**NLF**: Boards must ensure that:

- WIOA funding is used for training until DOL provides an affirmative decision for TAA certification; and
- the rules and regulations of the program funding the services are followed.

For example, if WIOA program funds were used to provide training to a TAA claimant before a petition certification, WIOA and Eligible Training Provider requirements must be followed. Participants may transition to TAA-approved training after the petition is certified and TAA eligibility is determined. To facilitate a seamless transition, the cost of

training must shift to the TAA program at the next logical break in training—such as the end of a semester, module, or term. The customer will remain co-enrolled, according to TAA and WIOA rules and regulations. State merit staff must make an official determination.

### **Assessments**

**NLF**: Boards must ensure that Workforce Solutions Office staff:

- provides all trade-affected workers, including Trade Readjustment Allowances and Reemployment TAA customers, with an initial assessment after the workers are determined individually eligible for the TAA program;
- schedules the assessment to allow the trade-affected workers sufficient time to consider information, request and enroll in training, or obtain a waiver of the training requirement for Trade Readjustment Assistance before the expiration of the 26-week deadline for enrollment in training. Workforce Solutions Office staff must document the results of the assessment in the TWIST Counselor Notes; and
- makes comprehensive and specialized assessments available to all trade-affected workers. The comprehensive and specialized assessment must expand upon the initial assessment.

**NLF**: Boards must ensure that Workforce Solutions Office staff complete the TAA IEP Adversely Affected Worker and certification information and employment goals in order to issue a waiver of the training requirement.

**LF**: Boards may encourage Workforce Solutions Office staff to complete the initial assessment, comprehensive and specialized assessment, and TAA IEP during the same case management session, if applicable and appropriate.

### **Individual Employment Plan**

**NLF**: Boards must be aware that the TAA IEP replaces the Reemployment and Training Plan and that Workforce Solutions Office staff must complete an IEP, TWIST service code 68-Employability Development Plan, for any trade-affected worker seeking TAA assistance before the worker receives those benefits and services. The TAA IEP must include:

- an employment goal, including the targeted occupation and industry;
- the proposed training program if applicable;
- services that the worker will need to obtain suitable employment, including career services, supportive services provided through partner programs, and post-training case management services;
- supplemental assistance required for participation in training and the basis for cost calculations; and
- the worker's responsibilities under the plan.

If the IEP was developed under another partner program, it must be reviewed once the worker becomes a trade-affected worker to ensure that it has the components required by the TAA program. If the IEP does not contain the required components, staff must supplement the plan in collaboration with the trade-affected worker to ensure that it meets the TAA program requirements.

**NLF**: Boards must ensure that Workforce Solutions Office staff monitors the progress of trade-affected workers in meeting the responsibilities listed in the TAA IEP, including attendance and achievement in approved training programs.

### **Waiver Revocations**

**NLF**: Boards must be aware that local state merit staff may revoke a training waiver if training is feasible and appropriate. All other waiver revocations (for example, “entered employment” and “no longer interested in training”) must be submitted to the state office. The state office will issue an official determination with the trade-affected worker’s appeal rights.

**NLF**: Boards must ensure that Workforce Solutions Office staff provides trade-affected workers with a copy of the Waiver of Training (WOT-1) form. If the trade-affected worker chooses to appeal the revocation, staff must submit the revocation to the state office.

### **Training Approval Criteria**

**NLF**: Boards must ensure that Workforce Solutions Office staff helps trade-affected workers prepare applications for training in a timely fashion. Training for trade-affected workers is allowed any time after the certification date, without regard to whether the worker applied for or exhausted unemployment insurance.

**NLF**: Boards must ensure that Workforce Solutions Office staff refers to a trade-affected worker’s assessments and TAA IEP before approving an application for training to determine whether the proposed training is appropriate based on the worker’s current skills.

**NLF**: Boards must ensure that Workforce Solutions Office staff approves training for trade-affected workers if the following approval criteria are met:

- There is no suitable employment available as defined at 20 CFR §618.110.
- The worker would benefit from the appropriate training.
- There is a reasonable expectation of employment following completion of training.
- Training is reasonably available to the trade-affected worker.
- The worker is qualified to undertake and complete the training.
- Training is suitable for the worker and available at a reasonable cost.

Training cannot be denied if a trade-affected worker already has an advanced degree, such as a master’s degree or a doctorate. Workforce Solutions Office staff must document in TWIST *Counselor Notes* that the approval criteria were met.

**NLF:** Boards must ensure that Workforce Solutions Office staff keeps training program costs reasonable by researching and comparing costs for similar training programs as described in section C-301 of the Texas Workforce Commission TAA Guide. Before purchasing equipment or related materials for workers, Workforce Solutions Office staff must exhaust alternatives, such as lease options or the use of computer labs, to ensure that those purchases are truly necessary.

### **Suitable Employment**

**NLF:** Boards must ensure that Workforce Solutions Office staff uses accurate workforce information on current and projected demands to determine whether suitable employment is available. This information includes, but is not limited to:

- job order activity;
- short-term projections data;
- job vacancy surveys;
- business visitation programs;
- local and regional strategic plans;
- all relevant labor market information;
- job postings; and
- third-party jobsites.

**NLF:** Boards must ensure that Workforce Solutions Office staff documents the information used to determine suitable employment in the trade-affected worker's TWIST *Counselor Notes*.

### **Training Amendments**

**NLF:** Boards must be aware that a training program may be amended until the time that the trade-affected worker has completed the entire training program as originally approved. Workforce Solutions Office staff must work with the trade-affected worker to amend a training program if:

- the need for the amendment was not foreseeable; and
- the customer demonstrates good cause for the need to amend.

**NLF:** Boards must be aware that one or more of the conditions set forth at 20 CFR §618.665(a)(1)(i)–(x) must be met for an amendment to be appropriate.

### **Job Search and Relocation Allowance**

**NLF:** Boards must ensure that Workforce Solutions Office staff notifies the state office at [taa@twc.texas.gov](mailto:taa@twc.texas.gov) when trade-affected workers request a job search and relocation.

### **Supplemental Assistance**

**NLF:** Boards must ensure that supplemental assistance is provided to trade-affected workers to defray reasonable subsistence and transportation expenses while a trade-affected worker participates in TAA-approved training outside of the local commuting area.

**NLF**: Boards must ensure that reimbursement for mileage is calculated from the first mile outside of the worker’s commuting area to and from the training provider. Boards must use the mileage rate authorized under the Federal Travel Regulations.

**NLF**: Boards must make supplemental assistance payments to trade-affected workers at the completion of a week of training.

In order to receive subsistence payments, trade-affected workers must turn in all receipts for:

- lodging;
- purchased transportation expenses (for example, costs for rental cars, rental car fuel, buses, trains, airfare, ride-share services, and tolls); and
- meals.

**LF**: Boards may advance a subsistence payment for one week if staff determines that the trade-affected worker needs the funds to participate in training.

### **TAA Program Funds**

**NLF**: Boards must ensure that Workforce Solutions Office staff uses TAA program funds as the primary funding source to serve trade-affected workers. Workforce Solutions Office staff must use WIOA funds to provide services only when TAA program funding may not be used for the services. For example, staff must use TAA program funds to pay for training, whereas it is recommended that WIOA funds must be used to provide appropriate supportive services that cannot be funded by the TAA program.

### **INQUIRIES:**

Send inquiries regarding this WD Letter to [wfpolicy.clarifications@twc.state.tx.us](mailto:wfpolicy.clarifications@twc.state.tx.us).

### **REFERENCES:**

20 CFR Part 618, Trade Adjustment Assistance Under the Trade Act of 1974, as Amended  
Training and Employment Guidance Letter No. 03-20, issued September 24, 2020, and titled “Determining the Availability of Suitable Employment Under the Trade Adjustment Assistance Program’s Final Rule to Return Trade-Affected Workers to Employment as Quickly as Possible”