

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

2005 DEC 29 PM 4:51

ASOCIACIÓN DE TRABAJADORES
FRONTERIZOS, *et al.*,

Plaintiffs;

v.

U.S. DEPARTMENT OF LABOR, *et al.*,
Defendants.

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Civil Action Nos. *C. Ruiz*
EP-04-CA-400-FM
and
EP-02-CV-131-FM

PLAINTIFFS' UNOPPOSED MOTION TO DISMISS

All parties to both of the above cases have executed the attached Settlement Agreement and exhibits, which are Bates Stamped "ATF Settlement" Pages 1-62. Pursuant to the Agreement and FED. R. CIV. P. 41(a)(2), all Plaintiffs in both cases hereby move for immediate dismissal of all claims in both of the above cases with prejudice. All parties have agreed to this Court's retention of jurisdiction for the sole purpose of enforcing the Agreement. Before enforcement jurisdiction is effective, however, it must be explicitly reserved in the order of dismissal itself. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 398 (1994). The attached proposed order complies with the Agreement, *Kokkonen*, and Rule 41(a)(2).

Finally, Plaintiffs express their gratitude to the Court for its careful management of these difficult cases.

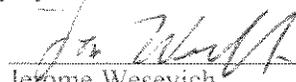
Respectfully submitted,
TEXAS RIOGRANDE LEGAL AID, INC.

Dated: December 29, 2005


Carmen E. Rodriguez (TX Bar No. 14417400)
Jerome W. Wesevich (TX Bar No. 21193250)
1331 Texas Avenue
El Paso, Texas 79901
(915) 585-5100
Fax: (915) 544-3789
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the above document and attachments to be served upon all counsel of record instantly by email on December 29, 2005.


Jerome Wesevich

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

*ASOCIACIÓN DE TRABAJADORES
FRONTERIZOS, et al.,*

Plaintiffs;

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U.S. DEPARTMENT OF LABOR, *et al.*,
Defendants.

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Civil Action Nos.
EP-04-CA-400-FM
and
EP-02-CV-131-FM

FINAL ORDER OF DISMISSAL

Upon considering Plaintiffs' Motion to Dismiss filed herein, the Court now FINDS:

- (1) all plaintiffs to both of the above cases have agreed to dismiss all of their claims against all parties in both cases with prejudice;
- (2) all parties have agreed that this Court will retain jurisdiction for the sole purpose of enforcing the Settlement Agreement that Plaintiffs attached to their Motion to Dismiss;
- (3) no cross-claims or counter-claims are pending in either of the above cases;
- (4) no Rule 23 class certification has been requested or approved in the above cases; and
- (5) no Rule 66 receiver has been requested or appointed in either of the above cases.

THE COURT THEREFORE ORDERS:

- (1) all claims in both of the above cases are dismissed with prejudice;
- (2) this Court retains jurisdiction for the sole purpose of enforcing the terms of the Settlement Agreement attached to Plaintiffs' Motion to Dismiss;
- (3) the clerk shall file this order in both of the above-numbered cases.

SO ORDERED THIS _____ DAY OF DECEMBER, 2005.

Hon. Frank Montalvo
United States District Judge

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the Parties to the lawsuits styled *Asociación de Trabajadores Fronterizos, et al. v. Cassie Carlson Reed, et al.*, Cause No: EP-02-CA-0131 (FM) pending in the United States District Court for the Western District of Texas, El Paso Division and *Asociación de Trabajadores Fronterizos, et al. v. United States Department of Labor*, Cause No: EP-04-CA-0400 (FM) pending in the United States District Court for the Western District of Texas, El Paso Division (hereinafter, both cases collectively referred to as the “Cases”).

Now therefore, in consideration of the mutual agreements and obligations set forth herein, the Parties agree as follows:

Section 1: The Parties

1.1 Plaintiffs. For purposes of this Agreement, the term “Plaintiffs” refers to and includes the Asociación de Trabajadores Fronterizos (“ATF”), Jose De La Cruz, Sandra Mora, Rodrigo Morin, Soledad Renteria, and Marisela Rodriguez.

1.2 United States Department of Labor. For purposes of this Agreement, the term “DOL” refers to and includes the United States Department of Labor, the Secretary of Labor, and all official decision-makers of the United States Department of Labor.

1.3 Texas Workforce Commission. For purposes of this Agreement, the term “TWC” refers to and includes the Texas Workforce Commission, its three commissioners, its executive director, and all official decision-makers of the Texas Workforce Commission.

1.4 Upper Rio Grande Workforce Development Board. For purposes of this Agreement, the term “Workforce Board” refers to and includes the Upper Rio Grande Workforce Development Board, Inc. d/b/a Upper Rio Grande @ Work, its directors, officers, chief executive officer, employees, attorneys, agents and insurers.

1.5 Defendants. For purposes of this Agreement, the term “Defendants” collectively refers to and includes the DOL, TWC and Workforce Board.

1.6 Parties. For purposes of this Agreement, the term “Parties” collectively refers to and includes the Plaintiffs, DOL, TWC and Workforce Board.

Section 2: Terms of Settlement

2.1 Purpose. The purpose of this Agreement is to forever and completely resolve all claims and disputes pending between the Parties in the Cases.

2.2. Dismissal of the Cases with Prejudice. Plaintiffs, in consideration of the commitments of Defendants contained herein, agree to immediately move to dismiss all claims in the Cases with prejudice. The Parties agree that the trial court retains jurisdiction for the sole purpose of enforcing the terms of this Agreement.

2.3 Defendants' Commitment to Fund and Administer an LEP Project in the El Paso Area. The Defendants agree to fund and administer a project for limited English proficient trade-certified displaced workers ("LEP Participants") on the following terms:

2.3.1 Establishment of the LEP Project. The DOL and TWC agree to make available through the Workforce Board a total sum of \$6.0 million in new program funds that may be obligated at any time over a two-year period for an LEP project (hereinafter the "LEP Project").

2.3.2 Purpose. The purpose of the LEP Project is to demonstrate that training can enable LEP workers to enter good jobs in El Paso when clear training goals are established at the outset, necessary resources are available, dual-language training is emphasized, and training is coordinated with careful individual assessments and other services to ensure that participants are prepared to successfully undertake training. The parties will work in good faith to administer the LEP Project consistent with this purpose. The parties affirm that successful implementation of the LEP Project will depend on the ongoing participation and cooperation of the parties to this agreement.

2.3.3 LEP Project Funding Dedicated for Use in the El Paso Area. DOL and TWC affirm that this \$6.0 million in program funding (hereinafter the "LEP Project Funding") would not have otherwise been provided to the Upper Rio Grande Workforce Development Area (the "El Paso Area"), in the absence of this Agreement. These funds are the combined resources of TWC's Workforce Investment Act Dislocated Worker funds (\$1.5 million in Dislocated Worker Additional Assistance Funds), TWC's federal Trade funds (\$1.0 million), and DOL Workforce Investment Act (\$3.5 million) funding under a National Emergency Grant.

2.3.4 Trade Funding from TWC. As part of the \$6.0 million committed to the LEP Project Funding, the TWC will make available \$1.0 million in Trade Adjustment Act ("TAA") funds to the El Paso Area (the "Trade LEP Project Funding"). The Trade LEP Project Funding will be available to pay training costs of any Eligible LEP Participant who remains eligible for Trade Act funded training. The Parties agree that the Trade LEP Project Funding will be spent whenever possible for each Eligible LEP Participant before other LEP Project Funds are available for the same Eligible LEP Participant, in accordance with Trade Act statute, rules and regulations.

2.3.5 Commencement Date for LEP Project Funding. The LEP Project Funding and Trade LEP Project Funding will be made available in the El Paso Area. Funding provided by the TWC will be available by January 1, 2006, with the LEP Project to commence at a reasonable time thereafter. Funds available from the DOL NEG will be made available consistent with the terms of this Agreement.

2.3.6 La Mujer Outreach Training Contract. The Workforce Board will, from LEP Project Funding, award a sole-source two-year contract to La Mujer Obrera to provide \$100,000 in outreach and training services to the Workforce Board and its one-stop career center operator(s) (the “La Mujer Outreach and Training Contract”). The La Mujer Outreach and Training Contract will include at least \$25,000 for outreach services during the enrollment window for participants to enroll in the LEP Project. The remainder of the La Mujer Outreach and Training Contract funds will be dedicated to training of Workforce Board staff and the staff of its contractors by La Mujer Obrera on orientation, assessment, career counseling, and training referral of LEP participants by caseworkers in the El Paso Area. DOL and TWC approve of the sole-sourcing of the La Mujer Outreach and Training Contract by the Workforce Board. The Workforce Board may provide additional case manager training from the LEP Project Funding, either through La Mujer Obrera or other contractors/sources from available administrative funding.

2.3.7 Eligibility. The Workforce Board, TWC, Plaintiffs, and La Mujer Obrera (pursuant to the previous paragraph) will work together to identify and conduct outreach efforts to locate eligible LEP Participants. Eligibility to participate in the LEP Project will be limited to individuals (“Eligible LEP Participants”) who meet all of the following criteria:

- (1) limited in English proficiency;
- (2) certified as eligible to apply for TAA after January 1, 1997 and prior to July 1, 2004;
- (3) began Trade Act training in El Paso, but did not complete a vocational training program for any reason;
- (4) not currently eligible for Trade Readjustment Allowances benefits outside the LEP Project; and
- (5) apply for participation in the LEP Project between May 17, 2006 and August 17, 2006, provided that the five individual plaintiffs named in the Cases may apply for participation beforehand.

2.3.8 Available Training Courses in the LEP Project. The training courses available as part of the LEP Project (“Approved Training Courses”) shall include: (a) vocational training courses that will provide LEP workers with the training to be job-ready for occupations that appear on the Workforce Board’s Demand or Targeted Occupation Lists; (b) customized training permitted under the statute, rules and regulations of the Trade Act and/or WIA, in cases where an LEP Participant has a bona fide job offer that requires training for a position that is not listed on the Workforce Board’s Demand or Targeted Occupation Lists (in such cases, the training will be considered and treated as “customized training” under the applicable statute, rules and regulations); (c) on-the-job training (“OJT”) opportunities permitted under the statute, rules and regulations of the

Trade Act and/or WIA; and (d) remedial education, including ESL, ABE, GED, basic computer skills, the preparedness training described in paragraph 2.5.3 below, and similar courses, only to the extent necessary to enable a worker to complete specific vocational or OJT training, or when an assessment shows that remedial education is all that a participant needs to form a complete skill set needed for a specific target occupation. Approved Training Courses will be offered in dual-language format, as available. Approved Training Courses can be integrated with an OJT training, as available. Individuals enrolled and maintaining satisfactory attendance and educational progression in an Approved Training Course will not be required to leave training to accept a job offer.

2.3.9 Needs Related Payments. To the extent that OJT is not available, then Eligible LEP Participants may receive needs related payments (“NRPs”) and support services that will be funded under this agreement on the following terms:

2.3.9.1 The weekly NRP amount will be set at the individual’s weekly benefit amount as determined by applicable law.

2.3.9.2 In order to receive NRPs, an individual must be enrolled in an Approved Training Course as defined by Section 2.3.8 above.

2.3.9.3 Payment of NRPs will not extend beyond the duration of the individual’s selected training course.

2.3.9.4 Individuals who do not maintain acceptable attendance in approved vocational training courses will immediately lose eligibility for NRPs, and the NRPs will immediately cease. The determination as to whether there is unacceptable attendance will be made by the Workforce Board. WIA governs eligibility and procedures of appeals.

2.3.9.5 Individuals enrolled in approved vocational training courses must demonstrate that they are educationally progressing at a pace to successfully complete the course in the time scheduled for the vocational training; individuals not progressing at an acceptable educationally improving rate will be dropped from the vocational training and lose eligibility for NRP, and the NRPs will immediately cease, but only after it has been determined by the Workforce Board that: (a) insufficient progress is being made; and (b) reasonable efforts have been taken to improve the insufficient progress. The determination as to whether an individual is not progressing at an acceptable educationally improving rate will be made by the Workforce Board. WIA governs eligibility and procedures of appeals.

2.3.10. Establishment of Individual Goals for All LEP Project Participants. Prior to commencement of training, an Individual Employment Plan (“IEP”) will be established for all LEP Participants who enroll in the LEP Project. The IEP will include clearly written training goals that are established prior to the commencement of training and take into consideration the availability of necessary resources to train LEP Participants. The IEP will emphasize the use of dual-language training and/or OJT to the maximum extent possible for each LEP Participant. The Workforce Board will ensure ongoing and careful attention to the IEP as the LEP Participant progresses through his or her training.

2.3.11 Termination of LEP Project Benefits for Participant Noncompliance. Individuals who are dropped from an Approved Training Course for either poor attendance or failure to educationally progress will lose all eligibility for benefits in the LEP Project.

2.3.12 Cutoff of New Participants Upon Obligation of LEP Project Funding. Upon the obligation of all of the LEP Project Funding, regardless of the number of Eligible LEP Participants seeking training in the LEP Project, no further payments or benefits will be paid to individuals seeking to enroll after the time it is determined by the Workforce Board that all LEP Project Funding has been obligated. LEP Participants who are still eligible to receive available Workforce Investment Act funds may apply with the Workforce Board.

2.4 DOL’s Additional Commitments. In consideration of the agreement of Plaintiffs to dismiss the Cases with prejudice, and in addition to its other commitments described herein, DOL agrees to the following:

2.4.1 DOL will, within 30 days of the execution of this Agreement, issue the Training and Employment Guidance Letter that is attached as Exhibit A to this Agreement.

2.4.2 DOL will, within 30 days of the execution of this Agreement, issue the letter to Plaintiffs’ counsel that is attached as Exhibit B to this Agreement.

2.4.3 In addition to other funds to be provided by DOL under this Agreement, DOL will, within 30 days of the execution of this Agreement, pay Texas RioGrande Legal Aid \$30,000 in costs incurred by it in connection with the Cases.

2.5 TWC’s Additional Commitments. In consideration of the agreement of Plaintiffs to dismiss the Cases with prejudice, and in addition to its other commitments described herein, TWC agrees to the following:

2.5.1 TWC will, within 30 days of the execution of this Agreement, formally issue and implement the Trade Policy Guide revisions that are attached as Exhibit C to this Agreement.

2.5.2 TWC agrees, within 30 days of the execution of this Agreement, to publicly issue a request for proposal (“RFP”) for a \$200,000 contract to be awarded to a qualified person or entity to provide expertise on the needs of LEP trade-affected workers and who has significant experience working with LEP trade-affected workers (“LEP Handbook-Service Improvement Contract”). TWC further agrees to award the contract to a bidder within 90 days after issuance of the RFP. The LEP Handbook-Service Improvement Contract will require the successful bidder to provide and/or deliver drafts within six months, and within one year, the following final products: (a) a completed handbook for workforce system caseworkers on the best practices for intake and counseling of LEP trade-affected workers, (b) a technical assistance guide on the orientation of female displaced workers with regard to opportunities in occupations that are not traditionally held or sought by women, (c) recommended best practices for local workforce development boards to assess of the availability and quality of bilingual vocational courses, and (d) development of a technical assistance guide to enable Boards to select an assessment tool for use with LEP displaced workers. The RFP for the LEP Handbook-Service Improvement Contract will be evaluated and issued in accordance with all applicable procurement laws and regulations.

2.5.3 TWC agrees, within 30 days of the execution of this Agreement, to make \$300,000 in funding available to the Workforce Board with the requirement that the Workforce Board promptly issue an RFP for a \$300,000 contract to be awarded to a qualified person or entity to provide preparedness training to the LEP Participants enrolled in the LEP Project (“LEP Preparedness Training Contract”). WDB will award the contract to a bidder within 90 days of RFP issuance. The LEP Preparedness Training Contract will require the successful bidder to provide and/or deliver to all individuals enrolled in the LEP Project: (a) education about how to build effective study skills in a classroom environment;; (b) advise on available resources outside the training and employment network to remove barriers to successful completion of training; and (c) training through peer-to-peer mentoring and leadership skills development. The RFP for the LEP Preparedness Training Contract will be evaluated and issued in accordance with all applicable procurement laws and regulations.

2.6 Workforce Board’s Additional Commitments. In consideration of the agreement of Plaintiffs to dismiss the Cases with prejudice, and in addition to its other commitments described herein, the Workforce Board agrees to the following:

2.6.1 The Workforce Board will require its contractors to create a special LEP Unit in the workforce centers to assist LEP Participants with their special needs in receiving an individualized assessment and obtaining valuable job

retraining. The LEP Unit will receive training in providing orientation, individualized assessment and career counseling of LEP participants.

2.6.2 The Workforce Board will empanel an LEP Committee consisting of at least one person appointed by the Plaintiffs, with the LEP Committee to regularly meet to advise the LEP Unit and follow up on any issues related to the LEP Project or this Agreement.

2.6.3 The Workforce Board shall ensure that ATF has prompt and free access to a paper or electronic copy of documents concerning each individual LEP Project Participant who provides ATF with a signed, unnotarized release. The release shall include identification of the specific documents being requested, each specific purpose for which the documents will be used by ATF, and ATF's assurance to continue safeguarding the privacy of such documents. To obtain access to documents not identified in the aforementioned release, any requestor shall comply with the Texas Public Information Act and other applicable law.

Section 3: Miscellaneous

3.1 No Admissions of Liability or Wrongdoing. The Parties neither admit any liability nor wrongdoing as part of this Agreement, but represent that they are merely entering into this Agreement in order to avoid the time, cost, expense and risks associated with disputing or litigating the Cases.

3.2 Entire Agreement. It is understood and agreed that the terms of this Agreement constitute the entire understanding and agreement between the parties regarding the Cases, and may not be changed or modified in any way except in writing signed by authorized representatives of the parties.

3.3. Savings Clause. If, for any reason, any provision of this Agreement is held invalid, either in whole or in part, such invalidity shall not affect any other provision of this Agreement not held to be invalid and each such other provision shall continue in full force and effect.

3.4 No Waiver of Sovereign Immunity. In consideration of this resolution, all parties understand that it is the Defendants' intent to preserve their sovereign immunity to the fullest extent allowed by law, except as provided herein. The Workforce Board intends to waive its sovereign immunity only in respect to the actual settlement agreement and reserves its sovereign immunity for any pending or future contracts or agreements between the parties.

3.5. Litigation Fees and Costs. Except as provided in section 2.4.3 above, each party will be responsible for their own attorney fees and costs associated with the Cases.

3.6 Confidentiality Pending a Mutual Media Announcement of the Agreement and LEP Project. The Parties agree that this Agreement is confidential, to the extent permitted by state and federal law, until it becomes a final and fully executed agreement. The parties agree not to disclose the terms of this Agreement until it becomes final, except as may be required by the Freedom of Information Act, the Texas Public Information Act, and/or any other state or federal open government law. All terms of this Agreement are void if any term is leaked to the media before the Agreement becomes a final and fully executed agreement, except as identified above in response to a proper request under the Texas Public Information Act or other state or federal open government law. Plaintiffs, TWC and the Workforce Board will participate in an appropriate media/press event to announce this Agreement and the LEP Project. DOL may elect to participate in such appropriate media/press event. Any party remains free to issue its own press release.

Reviewed and agreed to this
____ day of December, 2005:

Reviewed and agreed to this
____ day of December, 2005:

**Asociación de Trabajadores
Fronterizos**

**Upper Rio Grande Workforce
Development Board, Inc.**

By: Guillermo Glenn
Title: Authorized Representative
Asociación de Trabajadores
Fronterizos

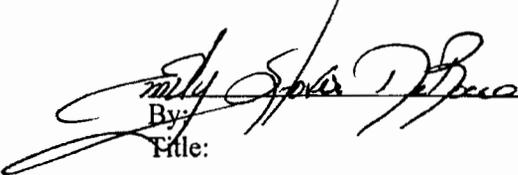
By: Charles C. High, Jr.
Title: Chairman, Board of Directors
Upper Rio Grande
Workforce Development Board

Reviewed and agreed to this
____ day of December, 2005:

Reviewed and agreed to this
____ day of December, 2005:

United States Department of Labor

Texas Workforce Commission


By:
Title:

By:
Title:

Reviewed and agreed to this
28th day of December 2005:

Reviewed and agreed to this
____ day of December, 2005:

The following individual Plaintiffs affirm that they have read and reviewed this Agreement, or have had all of its terms it-explained to them in a language they understand; that they are 18 years of age or older and of sound mind; that they have voluntarily entered into this Agreement, that they understand they are dismissing their

3.6 Confidentiality Pending a Mutual Media Announcement of the Agreement and LEP Project. The Parties agree that this Agreement is confidential, to the extent permitted by state and federal law, until it becomes a final and fully executed agreement. The parties agree not to disclose the terms of this Agreement until it becomes final, except as may be required by the Freedom of Information Act, the Texas Public Information Act, and/or any other state or federal open government law. All terms of this Agreement are void if any term is leaked to the media before the Agreement becomes a final and fully executed agreement, except as identified above in response to a proper request under the Texas Public Information Act or other state or federal open government law. Plaintiffs, TWC and the Workforce Board will participate in an appropriate media/press event to announce this Agreement and the LEP Project. DOL may elect to participate in such appropriate media/press event. Any party remains free to issue its own press release.

Reviewed and agreed to this
 ____ day of December, 2005:

**Asociación de Trabajadores
 Fronterizos**

By: Guillermo Glenn
 Title: Authorized Representative
 Asociación de Trabajadores
 Fronterizos

Reviewed and agreed to this
 27 day of December, 2005:

**Upper Rio Grande Workforce
 Development Board, Inc.**

Charles C. High, Jr.
 By: Charles C. High, Jr.
 Title: Chairman, Board of Directors
 Upper Rio Grande
 Workforce Development Board

Reviewed and agreed to this
 ____ day of December, 2005:

United States Department of Labor

By:
 Title:

Reviewed and agreed to this
 ____ day of December, 2005:

Texas Workforce Commission

Larry E. Boydell
 By:
 Title: Executive Director

Reviewed and agreed to this
 ____ day of December 2005:

Reviewed and agreed to this
 28 day of December, 2005:

The following individual Plaintiffs affirm that they have read and reviewed this Agreement, or have had all of its terms it-explained to them in a language they understand; that they are 18 years of age or older and of sound mind; that they have voluntarily entered into this Agreement, that they understand they are dismissing their

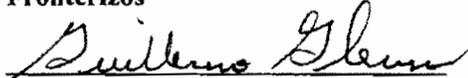
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Reviewed and agreed to this
22 day of December, 2005:

Reviewed and agreed to this
____ day of December, 2005:

**Asociación de Trabajadores
Fronterizos**

**Upper Rio Grande Workforce
Development Board, Inc.**



By: Guillermo Glenn
Title: Authorized Representative
Asociación de Trabajadores
Fronterizos

By: Charles C. High, Jr.
Title: Chairman, Board of Directors
Upper Rio Grande
Workforce Development Board

Reviewed and agreed to this
____ day of December, 2005:

Reviewed and agreed to this
____ day of December, 2005:

United States Department of Labor

Texas Workforce Commission

By:
Title:

By:
Title:

Reviewed and agreed to this
____ day of December 2005:

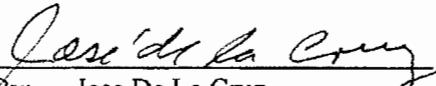
Reviewed and agreed to this
____ day of December, 2005:

The following individual Plaintiffs affirm that they have read and reviewed this Agreement, or have had all of its terms it-explained to them in a language they understand; that they are 18 years of age or older and of sound mind; that they have voluntarily entered into this Agreement, that they understand they are dismissing their

pending legal claims against the Defendants by executing this Agreement, and that they are satisfied with the terms of settlement reached in this Agreement.

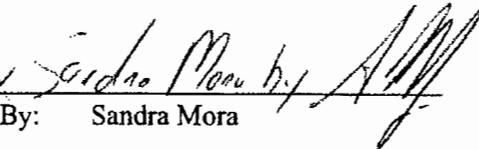
Reviewed and agreed to this
22 day of December, 2005:

Jose De La Cruz


By: Jose De La Cruz

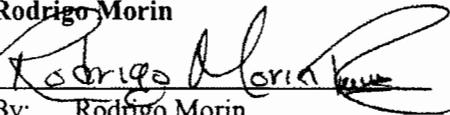
Reviewed and agreed to this
22 day of December, 2005:

Sandra Mora


By: Sandra Mora

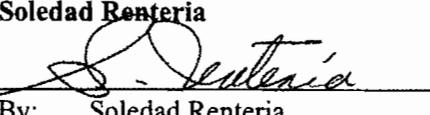
Reviewed and agreed to this
23 day of December, 2005:

Rodrigo Morin


By: Rodrigo Morin

Reviewed and agreed to this
23 day of December, 2005:

Soledad Renteria


By: Soledad Renteria

Reviewed and agreed to this
28 day of December, 2005:

Marisela Rodriguez

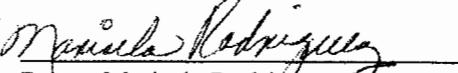

By: Marisela Rodriguez

EXHIBIT A

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA/NAFTA-TAA
	CORRESPONDENCE SYMBOL
	DATE

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO.

TO: ALL STATE WORKFORCE AGENCIES
 ALL STATE WORKFORCE LIAISONS
 ALL STATE TRADE COORDINATORS

FROM: EMILY STOVER DeROCCO
 Assistant Secretary

SUBJECT: Serving Participants under the Trade Adjustment Assistance (TAA) and North American Free Trade Agreement Transitional Adjustment Assistance (NAFTA-TAA) Programs

1. **Purpose.** To clarify the Department's existing policy on serving participants, including those with limited English proficiency, under the TAA and NAFTA-TAA programs.
2. **References.** Trade Act of 1974 (Pub. L. 93-619), as amended; Trade Act of 2002 (Pub. L. 107-210); GAL 15-90, "Operating Instructions for Implementing the Omnibus Trade and Competitiveness Act of 1988 Amendments to the Trade Adjustment Assistance Program, Including Significant Changes Affecting Basic and Additional TRA Entitlement;" TEGL 11-02, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002;" TEGL 26-02, "Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons."
3. **Background.** Questions have arisen concerning how training is provided for workers, including those with limited English proficiency, under the TAA and NAFTA-TAA programs. This TEGL is intended to clarify the Department's existing policies related to the selection and approval of

RESCISSIONS None	EXPIRATION DATE: Continuing
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- 2 -

training programs for workers, including those with limited English proficiency.

4. **Training.** Training is approved under the TAA and NAFTA-TAA programs for adversely affected workers when all of the criteria for training approval at 20 CFR 617.22 are met. Under 20 CFR 617.22(a)(1) training is only available to workers for whom there is no suitable employment available. Suitable employment is defined for this criterion as "work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage."
 - a. **Training goal.** The goal of the program is to return workers to "suitable employment" at work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage. This is a worthy goal.

Accordingly, state agencies must make every effort to achieve this goal by providing an appropriate combination of reemployment services, training, and job search and relocation allowances where there are suitable employment opportunities that are feasible and appropriate for the worker to pursue. These efforts must include the appropriate training of case management workers. However, there is no guarantee that such suitable employment opportunities will be available to every worker, or that training targeted to an occupation where there is a reasonable expectation of suitable employment will actually result in employment at a wage of at least 80 percent of the participant's previous wage.

Section 617.22(a)(3) of 20 CFR explains that "a reasonable expectation of employment" does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training. There only must be a reasonable expectation of employment following training and, under 20 CFR 617.22(a)(2), the training must benefit the worker. In recognition of the limitations of local labor markets and the limitations on the training that is available under the TAA and NAFTA-TAA programs, the Department encourages states to use all available resources to achieve the best possible outcome for the individual worker.

Workers who qualify for Trade Act training must be told of the 80% wage replacement goal and provided general information about

- 3 -

available training programs, including access to labor market information, wage replacement information and web sites which may inform participants of the types of training available. Case files must contain sufficient documentation to demonstrate that all these requirements have been satisfied.

By the above, the Department encourages states to use all available resources to achieve the best possible outcome for the individual worker. Thus, as long as the state agency has determined that the approved training meets all requirements of the Trade Act and regulations, including the requirement that the training be available at a reasonable cost, a worker has a right to choose to enroll in higher cost training for an occupation that is more likely to meet the wage replacement goal of the Trade Act even when lower cost training in another occupation that does not meet this goal is also available to the worker.

However, none of the six training approval criteria limit the approval of training to training programs which result only in suitable employment. Such a requirement would have the effect of requiring training to be denied where a worker could not reasonably be assured of an offer of a job providing an 80% wage replacement upon completion of training. Further, it is not always feasible to train workers for suitable employment. There may be no suitable employment available for a worker or any employment that would meet the definition of suitable employment may require more education or experience than may be provided under the TAA or NAFTA-TAA programs. Therefore, the Department recognizes that a return to suitable employment is only a goal, and not a requirement for approval of training.

- b. **Training completeness.** Under 20 CFR 617.22(a)(2), no Trade Act training program may be approved unless it will render a "worker job-ready." Therefore, any training program approved must be a program that provides the skills necessary to return the participant to work when the former employment is no longer available. Before any training is approved, each worker's case file must identify what occupation the worker is being trained to enter.

In the case of participants with limited English proficiency, this may be achieved through (1) a contextualized training program which simultaneously provides the necessary occupational skills and remedial education (basic skills and/or English language skills) in an

- 4 -

integrated curriculum; (2) a combination of remedial education (including basic education and English language skills) and occupational skills training; or (3) in rare instances, through a stand-alone remedial education program if the individual possesses marketable occupation skills and only needs basic and/or English language skills to gain employment. As the Department stated when it published 20 CFR 617.22, "training designed to enhance the employability of individuals by upgrading basic skills, through remedial education or English-as-second-language courses, are considered as remedial education approvable under § 617.22(a) if all the approval criteria in that section are met. A training program of remedial education only may now be approved for an individual if he or she possesses occupational skills and needs only remedial education to obtain employment. Ordinarily, remedial education is made part of a broader skills training program as defined in § 617.22(f) (3)." Therefore, stand alone remedial education may only be approved where an assessment indicates that the individual, but for remedial education, possesses marketable job skills.

- c. **On-the-job training.** The TAA regulations, 20 CFR 617.23(c)(1), require each state agency to give priority to the use of on-the-job training (OJT). Thus, state agencies must take reasonable actions to develop on-the-job training opportunities for trade-affected workers by promoting the benefits of OJT under the TAA and NAFTA-TAA programs among local employers, and to present OJT to trade-affected workers as a first option, if available.
- d. **Informed choice.** State agencies must provide information, as necessary, to each trade-affected worker to enable that worker to make an informed choice among approvable training options, regardless of the worker's language or educational abilities. Informed choice must be based upon a completed assessment of pre-training skills that is included in each worker's case file. Each time a worker's education and language abilities are limited, careful case management at the training selection and approval stages, and while training is underway, are essential to successful completion of training.
- e. **Training program development.** Under 20 C.F.R. 617.22(a)(4), approved TAA training must be reasonably available from either governmental agencies, education providers or private training providers. It is not an appropriate use of Trade Act funds, training or administrative, to pay for the development of a training provider or program, curriculum development, teacher training or physical plant

-5-

needs. A training provider can recoup such costs as part of a reasonable tuition payment.

5. **Action.** States should make all appropriate staff aware of the contents of this TEGL and take appropriate measures to ensure appropriate provision of TAA and NAFTA-TAA services to individuals with limited English proficiency.
6. **Inquiries.** Inquiries regarding these instructions should be directed to the appropriate Regional Office.

DRAFT

EXHIBIT B

Jerome Wesevich
Carmen Rodriquez
Texas Rio Grande Legal Aid, Inc.
1331 Texas Ave.
El Paso, TX 79901

Re: Trade Adjustment Assistance Notice of Proposed Rulemaking

Dear Mr. Wesevich and Ms. Rodriquez:

With respect to the Settlement Agreement in the ATF cases in El Paso, on July 7, 2005 you requested that the TAA Notice of Proposed Rulemaking (NPRM) explicitly seek comments on the following issues:

- (1) what actions must state agencies take during the training approval process to pursue the goal of Trade Act training;
- (2) what actions must state agencies take to assure that Trade Act training is provided on the job insofar as possible;
- (3) what actions must state agencies take to identify and develop training opportunities that are necessary to meet the needs of trade-dislocated workers, but are not available within a trade-affected community;
- (4) what actions must state agencies take to ensure that workers make informed choices among training options;
- (5) what additional rules for distributing Trade Act training appropriations among state agencies are appropriate to pursue both the purpose of Trade Act training and uniform benefits as stated in 20 C.F.R. § 617.52; and
- (6) what additional rules are needed to preserve Trade Act benefits for workers when delays in enrollment are due to training program availability, temporary funding delays, or other administrative problems that are outside the worker's control

At this time, to comply with your request would unduly prolong the process for the publication of the Notice of Proposed Rulemaking (NPRM). As you are aware, all parties will be given the opportunity to comment on the NPRM which will have to be addressed in the Final Rule.

EXHIBIT C

Exhibit C consists of a revised version of the existing TWC publication entitled *Integration of Trade Services for Dislocated Workers: A Comprehensive Guide* (called the “Trade Policy Guide” in the Settlement Agreement). Attached is the revised text to appear in the Trade Policy Guide Parts A, B, C, and D, and in the Explanation of Services Form in Part F-400.

Part A: Glossary of Terms and Definitions

ABE	Adult Basic Education
ATAA	Alternative Trade Adjustment Assistance
Average Weekly Wage (AWW)	One-thirteenth (1/13) of the total wages paid to an individual in the individual's high quarter. The high quarter for an individual is the quarter in which the total wages paid to the individual were highest among the first four of the last five completed calendar quarters preceding the individual's last qualifying separation.
Board	Local Workforce Development Board
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1985. COBRA provides the right to temporary continuation of health coverage at group rates for certain former employees, retirees, spouses, former spouses, and dependent children. Eligible individuals must have lost coverage due to a qualifying event and have been enrolled in their employer's health plan while working.
Core Services	WIA services available to the universal population include, but are not limited to: <ul style="list-style-type: none"> • determinations of eligibility for WIA assistance • outreach and intake • orientation to Texas Workforce Center services • initial assessment of skill levels • support service needs • job search and placement • information on local, regional, and national labor markets, and • information on the 80% wage replacement goal as it pertains to the demand occupations in the Board area.
Dislocated Worker	A worker who has been permanently laid off or has received a notice of termination or layoff from employment, or is employed at a facility at which the employer has made a general announcement that the facility will close.
DOL	United States Department of Labor
ESL	English as a Second Language
ETPS	Eligible Training Provider System. A TWC review process that requires training providers to register with the state in order to be eligible to provide services funded by WIA. Training providers must attain ETPS certification with TWC.
GED	General Education Development

Glossary of Terms and Definitions (continued)

Group Plan	Health coverage sponsored by an employer or employee organization (such as a union) for employees and their eligible dependents.
HCTC	Health Coverage Tax Credit
High Risk Pool	High risk pools are subsidized health insurance pools that are organized by some states and offer health insurance to individuals who have been denied health insurance because of a medical condition or whose premiums are rated significantly higher than average due to health status or claims experience. High risk pools can be a form of qualified health coverage for the HCTC if they are deemed state-qualified.
Hourly Wage	All pay normally earned per hour, including bonuses, tips, gratuities, commissions, and overtime pay.
Impact Date	The date identified in a Trade Adjustment Reform Act of 2002 certification, on which either total or partial separations began or threatened to begin in a firm or subdivision of a firm.
IEP	Individual Employment Plan. An intensive service in which Workforce Center staff works with the participant to identify an occupation in demand that meets the 80% wage replacement goal, then develops a plan to address the occupational goal, the appropriate achievement objectives, and the combination of services for an individual to obtain his or her long-term occupational goals. The IEP names the specific occupation to be obtained as well as a training plan that makes the participant “job-ready” at the completion of training.
Intensive Services	Services that include diagnostic testing and other tools to assess support service needs, and must provide tools to assess skill levels. Other intensive services include individual case management, IEP development, and short-term prevocational skills. Workforce Center staff can provide these services when an individual received at least one core service, and staff determines that the individual needs more intensive services to obtain employment, or to obtain and retain employment that leads to self-sufficiency, or prior to referral to dual-language vocational skills training.
Job Location	A worker’s physical place of work at the time the worker was separated from a trade-affected employer.
Layoff	A suspension of, or separation from, employment by a firm for lack of work, initiated by the employer, and expected to be for a definite or indefinite period of no less than seven consecutive days.
Long-term Employment	Employment lasting at least 150 days.
NEG	National Emergency Grant is an additional funding source opportunity that is part of WIA.

Glossary of Terms and Definitions (continued)

Number of Hours Worked Per Week	The usual number of hours of work scheduled per week, including overtime, in whole hour increments (no fractions of hours).
PBGC	Pension Benefit Guaranty Corporation. This was created on September 2, 1974, when the “Employee Retirement Income Security Act (ERISA) of 1974” was enacted. A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. The PBGC then pays pension benefits under the terms of the plan, subject to legal limits, to plan participants and beneficiaries.
Petition Status	<ul style="list-style-type: none"> • The status of a petition throughout the DOL investigation progress. The status is identified by these terms: • petition filed • investigation terminated • certified or • not certified.
RRS	Rapid Reemployment Services. Previously WPRS.
SOCRATES	SOCRATES (Standardized Occupational Components for Research and Analysis of Trends in Employment System) is a tool to assist Boards perform a regional labor market analysis. It allows Boards that are conducting WIA planning to generate lists of targeted industries and targeted occupations. It is also excellent for researching regional Texas labor markets and identifying occupational training possibilities or to justify new program submission and approval. The analytical tools and regional narrative reports within SOCRATES follow the planning guidelines issued for targeted industries and occupations and approved by TWC.
State Qualified Health Plan	Health plans that have been qualified by the Texas Department of Insurance (DOI) as meeting the requirements set forth in the Trade Adjustment Reform Act of 2002. A list of these plans will be submitted to the Treasury Department by DOI.
Suitable Employment	With respect to an affected worker, work of a substantially equal or higher skill level than the affected worker’s past employment, with wages of not less than 80 percent of the affected worker’s average weekly wage used to determine whether or not the participant is eligible for trade-funded training.
Supportive Services	Services such as transportation, child care, dependent care, and housing that are necessary to enable an individual to participate in activities authorized under WIA.

Glossary of Terms and Definitions (continued)

TA Bulletin	A T echnical A ssistance B ulletin distributed to Boards by TWC.
TAA	T rade A djustment A ssistance
TEGL	T raining and E mployment G uidance L etter. A DOL guidance letter distributed to states.
TRA	T rade R eadjustment A llowances. Weekly TRA may be payable to eligible workers when they exhaust unemployment benefits. TRA benefits will be paid if an individual is enrolled in a TAA-approved training program or has a waiver of the training requirement. TRA allowances are required for applicants who wish to apply for HCTC.
TRACER	T exas R apid A ccess to C areer and E conomic R esources is the only fully dynamic labor market information delivery system in Texas backed up by the combined experience of 80 economists.
Training Services	Under WIA and TAA, training services may include occupational skills training, vocational skills training, dual-language training which provides the necessary vocational skills and remedial education together in an integrated curriculum (also called contextual learning or integrated vocational skills training), or employer-based training such as On-the-Job Training (OJT) and customized training.
TWC	T exas W orkforce C ommission (State)
TWIST	T he W orkforce I nformation S ystem of T exas
UI	U nemployment I nsurance
WD Letter	W orkforce D evelopment L etter. A guidance letter distributed to Boards by the Workforce Development Division of TWC.
Waiver	Also known as “ W aiver of the Training Requirement,” “ W aiver of Training,” or “Training W aiver.”
WARN Notice	W orker A djustment and R etraining N otification
WIA	W orkforce I nsvestment A ct

Part B: Introduction

Part B-100 — Overview of Guide

B-100.1:
Purpose of
Guide

The purpose of this guide is to:

- enable the Texas workforce system to fully integrate the Dislocated Worker and Trade programs into the service delivery mix of the Texas Workforce Centers (Workforce Centers) and to assist trade-certified workers in identifying employment that meets the 80% wage replacement goal;
 - alert Unemployment Insurance (UI) Tele-Center staff to fully advise trade-affected dislocated workers applying for UI of the work search requirements for Trade Readjustment Allowances (TRA) and refer the workers to Workforce Centers to conduct job search activities;
 - assist Local Workforce Development Boards (Boards) and Workforce Center staff members to perform their responsibilities, including Rapid Response and Orientation to Trade services, and issuing waivers of the training requirements as needed as well as identifying appropriate vocational skills training or dual-language training opportunities in demand occupations for LEP participants;
 - inform Board and contractor staff of the requirement to co-enroll/register Trade-certified dislocated workers into services that address barriers to reemployment;
 - clarify the required sequence of services for trade-affected workers, including referral to vocational skills, or dual-language training in occupations that will allow the participant to meet the goal of 80% wage replacement;
 - demonstrate strategies for leveraging state and federal funding sources to maximize services to these workers; and
 - emphasize the importance of developing On-the-Job training opportunities for trade-certified workers.
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B-100.2
Objectives

This guide will help readers:

- apply the Workforce Investment Act (WIA) Sequence of Services;
 - identify dislocated workers who may be trade-affected;
 - describe the necessary components of the Individual Employment Plan (IEP);
 - improve referrals to training for LEP participants;
 - understand co-enrollment requirements; and
 - ensure that trade-affected workers are informed of the wage replacement goal of 80% as part of selection of occupational/vocational skills training .
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Part B-200 — The Trade Program

B-200.1: Goal of the Trade Program

The primary goal of the Trade program is to move trade-affected dislocated workers into suitable employment, new jobs that meet the 80% wage replacement goal, and to do so as quickly and effectively as possible. Recent changes to the federal Trade Act of 1974, as amended (Trade Act), ensure intervention strategies that offer the opportunity for rapid, suitable, and long-term employment for adversely affected workers by aligning the length of training with the availability of income support.

Full integration of employment and training services is accomplished by allowing trade-affected dislocated workers to access all appropriate services in the Workforce Centers, including Labor Market Information, training referrals, case management and follow-up services, to help dislocated workers reenter the workforce.

B-200.2: Trade Act Provisions

The Trade Act of 2002:

- consolidates NAFTA-TAA into TAA (dislocated workers certified for NAFTA-TAA under petitions received before November 4, 2002, continue to receive NAFTA-TAA services as long as their eligibility lasts);
- expands eligibility to secondary worker groups including suppliers and downstream producers;
- extends eligibility to farmer groups certified by the U.S. Department of Agriculture under the TAA for Farmers program;
- requires timeliness of Rapid Response assistance and petition investigation; and
- adds new benefits by establishing other Trade programs such as Health Coverage Tax Credit (HCTC), Alternative Trade Adjustment Assistance (ATAA), and TAA for Farmers.

The changes in the Trade Act offer Boards greater opportunities and flexibility for serving trade-affected dislocated workers.

B-200.3: Trade Act Web Site

For additional information, visit the Trade Act Web site at:

http://www.doleta.gov/tradeact/2002act_index.cfm

Part B–300 — Trade Program Benefits and Strategies

B-300.1: Trade Program Benefits

Several options are available to Workforce Center staff under the Trade program to develop reemployment strategies for eligible trade-affected dislocated workers: The options include:

- HCTC — provides assistance with the payment of premiums for eligible health coverage programs.
- ATAA — alternative benefit for workers who are at least 50 years of age.
- Job Search Allowance — covers expenses incurred in seeking employment outside the normal commuting area.
- Relocation Allowance — provides reimbursement to an individual for approved expenses when relocation is required.
- TRA — provides cash payments after UI benefits are exhausted while an individual is in an approved full-time training program or on a waiver of the training requirement for basic TRA.
- Training, including OJT and Customized Training — for reemployment in another job or career when “suitable employment” is not available. Such training should assist the worker in achieving a wage of 80% of their previous wage.

Note: Part C-400 covers these options in more depth.

B-300.2: Trade Service Strategy

The strategic planning process for each Board shall include the development of local policies for a trade service strategy that coordinates various service approaches to accomplish all of the following:

- assist dislocated workers eligible for Trade benefits to obtain suitable employment as quickly as possible;
- promote the use of WIA core and intensive services to support rapid reattachment to the workforce, where an 80% wage replacement goal is achievable;
- refer participants to pre-vocational and vocational training if suitable employment is not available without training;

**B-300.2:
Trade Service
Strategy
(continued)**

- develop OJT and Customized Training opportunities with employers with jobs in occupations that meet the 80% wage replacement goal for trade-certified workers, including opportunities for workers to supplement OJT with remedial education as necessary before and during OJT;
- provide training that offers dual-language training programs, opportunities, as necessary to assist Limited English Proficient clients in achieving job readiness in a demand or targeted occupation with long-term employment opportunities, and
- assist in job retention and career advancement.

Note: the primary goal of the TAA program is for the Trade-certified worker to be completely job ready at the completion of the training. The 80% wage retention goal should be attained if at all possible. In no case should the Trade-certified worker be denied training or retained on a waiver only because the 80% wage retention goal can not be met. If the Trade-certified worker lacks the entry-level requirements to enter TAA approvable training (see D-200.4 for criteria for approvable training), remedial training to meet the entrance requirements is required. Dual-language training or an OJT combined with remedial education are approvable alternatives.

**B-300.3:
General Board
Responsibilities**

Board Planning — amend and modify the Board’s strategic plan to incorporate and coordinate the design, policy development, and management of the integration of Trade-funded activities and other funded supportive services as well as addressing plans for meeting the training needs of LEP clients. Boards must work with training providers to ensure that dual-language training is available and included on the Eligible Trainer Provider List. Boards must also make a strong effort to develop OJT opportunities with employers. To help LEP workers access employer-based training, OJT may be preceded and accompanied as necessary by remedial skills training and/or by employer designed classroom training that meet the needs of the employers.

Reporting — ensure that Workforce Center staff document all services in The Workforce Information System of Texas (TWIST), in the IEP, and on a hard copy of the signed Explanation of Services, which ensures that participants are fully informed as to the options for training in demand or targeted occupations as well as whether or not the selected occupation will meet the 80% wage replacement goal. Workforce Center staff retains such documentation in their files. Documentation must be available if there is an appeal.

Monitoring — ensure the monitoring of program requirements and participant activities.

Operating — ensure the implementation of a customer service strategy that:

- identifies suitable employment;
 - issues waivers to training;
 - provides assessment;
 - develops an IEP;
 - refers to training;
 - manages cases; and
 - conducts follow-up.
-

Part B-400 — Using the Guide

B-400.1: ***Guide***

This guide is a resource to help readers familiarize themselves with the Trade program's history, purpose, rules, services, and best practices.

Trade information is organized into four parts, plus a glossary and appendices.

Part C: Pre-Trade Certification

Part C-100 — Trade Petitions and Rapid Response

C-100.1: Trade Petition Process

The first step in the Trade petition process is to determine whether to file a petition. The answers to the following questions may help you decide:

Does the company produce a product?

Did a change in foreign imports cause a decline in sales or production for the company?

Did the company shift production to a foreign country?

Note: “Yes” to any of the above questions could indicate trade-related jobs that have been adversely affected by foreign imports.
When in doubt, file a petition.

Any **one** of the following entities can file a petition with the United States Department of Labor (DOL):

- A group of at least three workers.
- An official of a labor organization representing the workers.
- An official of the employer or company.
- Designated Texas Workforce Center (Workforce Center) staff or partners.
- Staff with the Texas Workforce Commission (TWC) Dislocated Worker Unit.

DOL conducts an investigation and certifies petitions within 40 days of receiving the petition.

**C-100.1:
Trade Petition
Process
(continued)**

Note: During the 40-day certification period, provide core services including Rapid Response orientation, workshops, and initial assessment. Continue with intensive services if the dislocated worker is not job ready.

Petition forms are available in English and Spanish on the Internet at: <http://www.doleta.gov/tradeact/petitions.cfm>.

**C-100.2:
Triggers for
Rapid
Response**

Initiate Rapid Response services when you receive a:

- filed Trade petition;
 - WARN (Worker Adjustment and Retraining Notification) notice; or
 - public announcement of a layoff or closure.
-

Part C-200 — Rapid Response Coordinator

C-200.1: Rapid Response Coordinator's Role

When the layoff has not yet occurred, the local Rapid Response coordinator initiates and schedules Rapid Response services by contacting the employer within 48 hours of notification. The Rapid Response coordinator schedules an on-site management meeting that includes representatives of the employer and affected workers. A union representative is included in the meeting when a union represents workers.

As part of the on-site management meeting, collect the following information:

- Timeline for layoff.
- Number of employees affected.
- Types of positions affected.
- Work shifts involved.
- Space for on-site seminars/workshops.
- Company severance package.
- Security provisions.
- Contracted services.
- Information that assists in determining if filing a Trade petition is appropriate.

As part of the on-site management meeting, share the following information:

- Overview of all Workforce Center services.
- Trade petition process.
- Trade program benefits for employers.
- Trade program benefits for employees.
- Rapid Response team access to employer facilities.

C-200.1:
Rapid
Response
Coordinator's
Role
(continued)

- Employee orientation scheduled around shifts.
- Crisis counseling for employees.
- Contact information for Rapid Response coordinator.

Note: Early intervention is key to coordinating services with management and the workers subject to layoff.

If the layoff has already occurred, the local Rapid Response coordinator requests a mailing list of affected workers from the employer in order to conduct outreach.

Part C-300 — Rapid Response Services

C-300.1: Rapid Response Services

Rapid Response is a component of core services. The Local Workforce Development Boards (Boards) must ensure Rapid Response services are provided.

C-300.1.1 Workshops and Seminars

Rapid Response services include workshops and seminars for employees at the work site, including:

- financial management and budgeting;
 - labor market information, including a list of area demand occupations with wage information;
 - stress management;
 - resume writing;
 - interviewing skills; and
 - job search.
-

C-300.1.2 Employee Orientation

The employee orientation meeting for potentially trade-affected dislocated workers should include:

- completion of Rapid Response registration and survey;
- orientation to the Trade program—an explanation of the Trade benefits notification process and instructions on what to do if the petition is approved;
- registration for work as required by WorkInTexas.com, TWC's new job matching and service tracking system for the public labor exchange services;
- distribution of Trade program brochures and related materials;
- **time frames** for approval of Unemployment Insurance (UI) claims, application for Trade Readjustment Allowances, which may require enrollment in training, and Trade petitions; and
- information on the Health Coverage Tax Credit (HCTC) and Alternative Trade Adjustment Assistance (ATAA).

**C-300.1.2
Employee
Orientation
(continued)**

Note: Some new programs that need to be highlighted are HCTC and ATAA, which are covered in Part D.

**C-300.1.3
Intake
Overview**

The initial intake process collects information about the customer to determine the most effective approach to assist with reentry into the workforce. The more thorough the information collected at the beginning of the process, the better the foundation for coordination of services. This is an early opportunity to ensure that the participant is fully aware of the wages associated with the Board's demand and targeted occupations, which of these occupations will meet the goal of 80% wage retention of the participant's previous wage, and what training is required to enable the worker to enter and successfully complete the training for these occupations. Share information regarding the local labor market, available jobs, wage information, and programs and services with the customer during intake. Complete appropriate forms, such as the Explanation of Services.

**C-300.1.4
Rapid
Response
Registration**

At the completion of the employee orientation, enter the dislocated worker's Rapid Response registration information in The Workforce Information System of Texas (TWIST). This creates a TWIST "Intake – Common" record in which Workforce Center staff can add intake information at the Specialized Services Intake Level as it is received. The additional information helps expedite the eligibility for Workforce Investment Act (WIA) Dislocated Worker services as well as the co-enrollment process with the Trade program.

The first service is automatically recorded in TWIST's Service Tracking based on the Rapid Response registration. This simplifies the data entry process.

**C-300.1.5
Petition
Inquiry**

Petition information is entered into TWIST by state office TWC staff. Upon the entry of the petition information, a TAA Program Detail record is created in TWIST. Board and Workforce Center staff may perform a petition inquiry from TWIST Group Actions by performing a search by petition number or name of company.

**C-300.1.6
Dislocated
Worker
Service
Delivery**

Boards may use WIA Dislocated Worker funds to support the design and delivery of services to dislocated workers, including those who are trade affected. The Trade program is a complement to Dislocated Worker services, not a replacement for it.

Note: All potential and certified trade-affected workers are dislocated workers.

Dislocated Worker services begin when:

- a Trade Act petition is filed; or
- a layoff notice is received.

TWC's Rapid Reemployment Service identifies UI claimants who are likely to exhaust benefits.

WIA funding allocated to the Boards for Dislocated Worker services includes funding for:

- Rapid Response—orientation, workshops, etc.
- Outreach, reemployment assistance, assessment, case management, including development of the Individual Employment Plan (IEP)
- referrals to training
- supportive services
- follow-up services for both trade-affected and non-trade-affected dislocated workers.

Trade funding for out-of-area job search and relocation remains at the state level but is available to Trade-certified dislocated workers based on the Board's assessment and referral and the availability of such funds from DOL.

The delivery of these services must flow seamlessly from initiation of Rapid Response services to reemployment, provide an integrated array of services, and allow eligible customers to benefit from activities that are most suitable for their needs.

Note: The Trade Act requires Boards to provide Rapid Response services, core services, and intensive services available under WIA and other federal programs to dislocated workers filing a TAA

Part C-400 — Core Services

C-400.1: Sequence of Services Structure

Follow the WIA Sequence of Services when serving eligible trade-affected dislocated workers who request assistance. The sequence is:

Core > Intensive > Training

The Trade Act of 1974, as amended (Trade Act), establishes certain time frames for decisions concerning suitable employment and referrals to training. These timelines affect the participant's eligibility for trade adjustment allowances. The casemanager must be aware of these deadlines at all times and should note these timelines in TWIST. For example, the trade-certified dislocated worker should remain in core services only until Workforce Center staff determines that no suitable work is available.

All customers (Universal Population) who enter the Workforce Center have access to core services.

- Boards should obtain pre-registration data from customers who receive core services. Use the Specialized Services intake level in TWIST to capture the information. This data collection is strongly encouraged, because it allows TWC and Boards to track the core services provided.
- Boards can use WIA and Employment Services funds to provide core services.

Note: For details regarding documentation requirements, refer to the WIA Guidelines for Determining WIA Eligibility, available at: <http://www.twc.state.tx.us/boards/wia/txwia.html>.

C-400.2 Core Services

Core services begin at the Rapid Response orientation. Do not wait for the completion of the petition investigation before you start serving the potentially trade-affected dislocated worker, because the petition investigation may take up to 40 days for DOL to complete. Below are some activities you - must initiate immediately to help the customer:

- Complete Explanation of Services form, which outlines potential program services and benefits.
- Complete waiver of training form, which protects future Trade benefits associated with Trade Readjustment Allowances (TRA) and HCTC.
- Perform an assessment of knowledge, skills, and abilities.
- Identify availability of “suitable employment.”
- Ensure application for TRA is completed by calling a Tele-Center or UI field specialist.

Note: See Appendix F-400 for sample forms.

C-400.2.1 Explanation of Services Form

The Explanation of Services form identifies the potential Trade program services and benefits and also acts as the bona fide application for training. This form is signed by the dislocated worker and retained in the local file.

C-400.2.2 Waiver of the Training Requirement

To be eligible to receive TRA payments, the trade-affected dislocated worker must be enrolled in training or have a waiver of the training requirement. The initial waiver is valid for up to six months, with monthly reviews to ensure that the reason for issuing the waiver is still valid. To protect potential TRA benefits, complete the waiver of training form during:

- the Rapid Response employee orientation;
or
- first visit to the Workforce Center.

**C-400.2.2
Waiver of
the Training
Requirement
(continued)**

Complete and file the waiver of training form within eight weeks of the petition certification date or within 16 weeks of the qualifying separation, whichever is later (see Part D-400.4).

**C-400.2.3
Reasons for
Training
Waiver**

Below are six acceptable reasons to waive the training requirement:

1. **Worker subject to recall within six months.** This reason is applicable if the worker has a definite recall date that Workforce Center staff has verified with the employer. Enter the scheduled return to work date in the waiver document.
 2. **Worker possesses marketable skills.** This reason is applicable while the worker tests the market for suitable employment, or it appears the worker possesses marketable skills. As with every reason for a waiver, Workforce Center staff must reevaluate it at least every 30 days. The worker is eligible for TRA while conducting a work search as prescribed by state UI regulations.
 3. **Worker in poor health.** This reason is applicable if the worker is unable to attend school or work due to a health problem. Workforce Center staff should issue the waiver to protect future eligibility, although the worker may be disqualified from receiving UI and TRA. Document this in the TWIST Counselor Notes.
 4. **Retirement.** Worker is within two years of retirement in accordance with a private retirement plan or age or Social Security.
 5. **First available enrollment date is within 60 days.** This reason applies when training is available, but when the enrollment date is in the future. For purposes of TRA, the enrollment date is the date on which the worker is considered to be in training. Issue the waiver if the enrollment date is less than 60 days in the future.
 6. **Training is not available, or is not available at a reasonable cost, or no funds are available under TAA or federal law.** This reason applies if guidance has been provided to the Board that all available TAA funding has been exhausted, or if there is no approvable training within the local commuting area.
-

**C-400.2.4
Initial
Assessment**

The preliminary assessment of knowledge, skills, and abilities helps identify dislocated workers who possess marketable skills needed by local employers. It may also identify dislocated workers who need additional services at the intensive service level. The initial assessment includes:

- testing of skill levels such as math, reading, and writing to determine grade-level equivalencies;
- evaluating aptitudes, abilities, and supportive service needs;
- identifying transferable skills such as computer, problem solving, time management, and organization;
- assessing English language proficiency (command of the English language);
- identifying knowledge of foreign languages that may help an employer;
- assessing supportive service needs such as child care or transportation; and
- evaluating the need for referral to community resources such as the food bank, clothes closet, housing, or utility assistance.

Note: Each Board must have assessment tools that are designed for Limited English Proficient (LEP) workers.

**C-400.2.5
Limited
English
Proficiency**

Characteristics of persons who are LEP:

- Do not speak English as their primary language.
- Have a limited ability to read, speak, write, or understand English.
- Native language is not English.
- Live in a family or community environment in which a language other than English is dominant.

Workforce Center staff must take reasonable steps to ensure that LEP customers have access to translators and language-appropriate material describing programs, services, and information.

LEP workers must receive case management services, but it is particularly important at the training selection stage, to ensure that the client meets the TAA goal. So case managers must consider the following when assisting LEP workers in selecting training programs:

- Thorough exploration of the entire range of possible demand or targeted occupations is essential, with particular attention paid to transferable skills and long-term employment goals of each worker.
 - OJT can be supplemented with remedial education to enable LEP workers to participate in this preferred form of training.
 - Dual-language training programs (defined in Part D-400.3) have proved more effective than other forms of classroom training for LEP workers, so workers should be encouraged to derive as much of their classroom training as possible through Board-approved dual-language training opportunities.
 - Enrolling LEP workers in any form of stand-alone remedial education (including without limitation ESL, GED, ABE, and basic computer skills courses) should be avoided unless:
 - (1) assessment indicates that the worker only needs remedial education, and no vocational skills, to become job-ready in an appropriate demand or target occupation; or
 - (2) the stand-alone remedial education is of limited duration and approved in conjunction with dual-language or standard vocational training, and the case manager reasonably expects the worker to complete both the remedial and vocational parts, and be job-ready within the time allowed under TAA.
-

**C-400.2.6
Suitable
Employment**

Based on assessment results, Workforce Center staff may conclude that the dislocated worker has the skills for “suitable employment.”

During the initial assessment of the participants the term suitable employment is related to the decision to approve training. If no suitable work is identified and training is required, the goal of such training is to ensure that the occupation meets the goal of 80% wage replacement of the participant’s previous wage. Under the Trade Act, suitable employment means:

- work of equal or higher skill level; **and**
- pay of at least 80 percent of the average weekly wage of the ~~trade-affected job~~

Note: It is important to document whether suitable employment is identified for the trade-affected worker. Document this in the Counselor Notes menu selection of TWIST. The choice of occupational training that will not meet the goal must also be documented.

If suitable employment is not available, the worker continues through the WIA Sequence of Services.

**C-400.2.7
Labor
Market
Information**

Use TRACER and SOCRATES to analyze the local labor market to:

- determine employer needs;
- determine emerging, targeted, and demand occupations;
- identify employment opportunities that will allow the participant to meet the goal of 80% wage replacement of their previous wage; and
- identify employer-based training, such as OJT or Customized Training opportunities.

This analysis and the job seeker’s job search experience are important activities in the development of the Individual Employment Plan (IEP).

**C-400.2.8
TRACER**

TRACER (Texas Rapid Access to Career and Economic Resources) is a system that provides the following five basic Internet programs containing useful data and statistics:

1. **Covered Employment and Wages Program** — collects information from many Texas employers.
2. **Current Employment Statistics Program** — produces current employment and wage data.
3. **Local Area Unemployment Statistics Program** — generates total employment, unemployment, and unemployment rates.
4. **Occupational Employment Statistics Program** — develops occupational profiles by industry.
5. **Mass Layoff Statistics Program** — gathers information from employers that recently had large layoffs.

Access TRACER on the Internet at: <http://www.tracer2.com>.

**C-400.2.9
SOCRATES**

SOCRATES is a tool to assist Workforce Center staff in performing regional labor market analysis. Staff use it to generate lists of targeted industries and targeted occupations. It is also excellent for researching regional labor markets in Texas and identifying occupational training possibilities. Using information gathered from SOCRATES helps narrow the dislocated worker's job search.

Access SOCRATES on the Internet at:
<http://socrates.cdr.state.tx.us/>.

**C-400.2.10
Moving to
Intensive
Services**

After initial assessment, background information, labor market information, and identification of whether suitable employment is available, determine one of the following steps:

- job search; **or**
 - referral to training at the intensive services level, in an occupation that will allow the participant to meet the goal 80% of their previous wage to the maximum extent possible.
-

Part D: Post-Trade Certification

Part D-100 — Eligibility Determination

D-100.1: Certified Petition

When the U.S. Department of Labor (DOL) completes its investigation of the petition, it certifies or denies the petition and e-mails the determination to Texas Workforce Commission (TWC).

When TWC receives a certified petition, staff:

- notifies the appropriate Local Workforce Development Board (Board);
- updates the Trade Adjustment Assistance (TAA) petition status in The Workforce Information System of Texas (TWIST);
- requests a list of all affected workers under this petition from the employer, and enters the list into TWIST; and
- sends a letter of *potential eligibility* to the affected worker, with instructions to contact the Texas Workforce Center (Workforce Center).

Note: Receipt of a letter does not mean the worker is Trade certified. TWIST will assist the Center staff in identifying Trade-certified workers.

D-100.2: TWIST Petition Information

TWIST contains the information on whether a dislocated worker is Trade-certified. In TWIST, go to: Customer Information>Program Detail>TAA>Eligibility tab.

TWC requests certain information from the employer and makes an eligibility determination based on the response.

The status must be “yes” for all criteria for a dislocated worker to be Trade-certified and eligible to apply for Trade benefits.

The dislocated worker is now Trade-certified, but must still follow the Workforce Investment Act (WIA) Sequence of Services to access Trade benefits.

If the dislocated worker disagrees with the eligibility determination, the worker may file an appeal. See Part C-300.1.5.

Part D-200 — Intensive Services

D-200.1: Co-enrollment

At the time WIA intensive services begin, you must enroll all Trade-certified workers in WIA Dislocated Worker services.

Co-enrollment in both WIA and Trade programs allows the Trade-certified dislocated worker to fully benefit from WIA-funded case management and supportive services. The Dislocated Worker program gains credit for the successful outcome of the Trade-certified dislocated worker trained with Trade program funds and placed using WIA resources.

Here are key points to remember:

- Trade-certified workers **are** dislocated workers.
- All dislocated workers receive core services, including Rapid Response services and initial assessments
- The overall goal is to provide early intervention services that lead to rapid reemployment where the participant can expect an 80% wage replacement based on the prior employment.
- All TAA dislocated workers filing a petition must receive Rapid Response services, ES services as part of core services, and intensive services under WIA, including a referral to TAA funded vocational skills, or dual-language training when no “suitable employment” is available.

Co-Enrollment Services	
WIA funded	TAA funded
<ul style="list-style-type: none"> ▪ Rapid Response and Core Services ▪ Assessment – Initial and Comprehensive ▪ Career Counseling, including a review of demand occupations that will address the goal of an 80% wage retention ▪ Case Management ▪ Supportive Services ▪ Job Development and Placement Follow-up 	<ul style="list-style-type: none"> ▪ Intensive (including short-term pre-vocational training) ▪ Training (vocational/occupational, or dual-language), an OJT or customized Training ▪ Trade Readjustment Allowances (TRA) ▪ Health Coverage Tax Credit (HCTC) ▪ Alternative TAA for Older Workers (ATAA)

Note: If Rapid Reemployment is not possible, continue with a comprehensive assessment, develop an Individual Employment Plan (IEP), and refer the dislocated worker to training or an OJT, if appropriate.

**D-200.2:
Comprehensive
Assessment**

Comprehensive and specialized assessments are necessary to determine the range of realistic demand occupations for each worker who needs TAA training. The purpose of the comprehensive assessment is to ensure that each participant has the skills and qualifications to participate successfully in the selected training services, and fully understands the training needs and the time commitment involved in the decision. Be sure to coordinate with your assessment specialist at this stage of the process.

The testing is more detailed than Rapid Response or core services. It may include:

- a battery of tests to identify basic and transferable skills;
- interest inventories; and
- employer-suggested assessment instruments.

You should consider employer-based training such as customized training or On-the-Job Training (OJT) as options. Job developers or the Business Services Unit (BSU) can provide information regarding employer requirements.

**D-200.2:
Comprehensive
Assessment
(continued)**

Note: Employer-based training promotes employment placements, retention, earnings, and credential attainment.

Conduct in-depth interviewing and evaluation during the comprehensive assessment. This provides an opportunity for customer input and career counselor feedback. It helps determine what training programs may be successful and builds the dislocated worker's commitment and desire to follow the IEP.

Speak with your assessment specialist about the tools used in your local workforce development area (workforce area). Ensure that the Assessment Tool is appropriate for the LEP client as well as other dislocated workers. Some examples of assessment tools are:

- Test of Adult Basic Education (TABE);
 - Comprehensive Adult Student Assessment System (CASAS);
 - Career Occupational Preference System (COPS); and
 - Other skill assessment tools and interest inventories.
-

**D-200.3:
Individual
Employment
Plan**

IEP is a tool that allows you to work in partnership with the Trade-certified dislocated worker to develop a reemployment plan. In order to ensure a comprehensive discussion of employer needs, occupational training, and wage expectations, the case manager must document in TWIST the following information:

- Include all labor market information (LMI) regarding targeted and demand occupations and wage information by occupation, as appropriate based on the individual assessment of knowledge skills and ability;
- Of the targeted and demand occupations, identify specific occupations that will meet the 80% wage replacement goal;
- Identify barriers for the selected occupation, and clearly establish how training will remove those barriers.
- The IEP must cover the widest range of demand and targeted occupations to ensure that the participant may make an informed choice.
- Ensure that if the participant selects an occupation that will not meet the 80% wage replacement goal that the case notes and the IEP reflect the client's decision.

In selecting an occupation the focus must be on local employers' job requirements. Be certain to connect training elements in the IEP to the specific occupation.

**D-200.4:
Individual
Employment
Plan Document**

This document was previously known as the Trade-Affected Worker Assessment and Reemployment Plan. It now consists of entries and documentation in TWIST. This documentation is mandatory before a training referral can be approved. A hard copy signed by the client must be kept in the files.

What six critical elements should you include in the development of an IEP?

1. Job skills, work history, and education.
2. Assessment and other test results.
3. Specific occupation, selected in consultation with the participant and meeting the 80% wage replacement goal, which will be reasonably available on completion of training, or for

which the worker is willing to relocate.

4. Job skills, requirements, certifications, or licenses that the worker lacks for employment in the selected job.
5. How the training plans meet all of the skills needs of the occupation (includes acquisition of English proficiency, basic education, and prerequisites required for the job) within the available weeks of TAA benefits, unless WIA benefits will be used to provide additional weeks of training.
6. LMI that includes wage information, including whether the occupation will meet the 80% wage replacement goal.

**D-200.4:
Individual
Employment
Plan Document
(continued)**

Before you refer a Trade-certified dislocated worker to any type of training, regardless of whether it falls under intensive or training services. Remember, in order to approve the training, the casemanager must ensure that the individual meets each of the following six criteria and document the information.

1. No suitable employment is available.
2. Consider the ability of the Trade-certified dislocated worker to benefit from training based on a comprehensive assessment of the worker's knowledge, skills, and abilities.
3. Reasonable expectation of employment following completion of the training exists based on local targeted or demand occupations, or a *bona fide* job offer.
4. Training is reasonably available to the Trade-certified dislocated worker within the commuting area.
5. The Trade-certified dislocated worker is qualified to undertake and complete the training based on a comprehensive assessment of the worker's knowledge, skills, abilities, and interest.
6. Training is available for the selected occupation at a reasonable cost based on a review of similar Board-approved training in the workforce area. Reasonable cost comparisons, particularly in training programs for LEP workers, are discussed in detail under Part D-300.9 below.

**D-200.5:
Supportive
Services**

Assess and determine the need for supportive services, and include this information in IEP. These services help Trade-certified dislocated workers:

- remain in the program;
- focus on the coursework;
- stay on task; and
- complete components successfully according to their IEP.

***D-200.5:
Supportive
Services
(continued)***

Examples of supportive services are:

- child care;
- transportation (e.g., bus tokens, gas vouchers); and
- referral to community resources

Check your Board's supportive services policy for details.

Part D-300 – Trade Adjustment Assistance Benefits

D-300.1: Job Search Allowances

Job search allowances helps the Trade-certified dislocated worker (who also has an active ES work application on file) with job search expenses such as reimbursements for transportation to job interviews outside the normal commuting area. Job search allowances may be approved if the worker:

- wants to relocate and has a bona fide job interview;
- applies within 365 days of the petition certification or most recent separation; or
- applies within 182 days after the last day of TAA-approved training.

Job search allowances reimburse up to 90 percent of the allowable cost for job searches outside the normal commuting area, up to a cumulative maximum of \$1,250 if the individual meets the following criteria:

- Suitable employment is not available within the normal commuting area.
 - There is a reasonable expectation the Trade-certified dislocated worker will obtain suitable full-time employment of long-term duration in the area where the job search is conducted (part-time employment is not allowed).
 - The worker makes a written request and sends it to the TWC Dislocated Worker Unit through Workforce Center staff before beginning each job search trip.
 - The worker arranges at least one job interview verified by TWC before leaving for a job search trip.
-

D-300.2: Relocation Allowances

The Trade-certified dislocated worker may use job relocation allowances to help relocate within the United States when local work is not available and the worker receives a *bona fide* job offer. The Trade-certified dislocated worker can receive an allowance of up to 90 percent of the allowable transportation and moving costs for the worker, the worker's family, and the worker's household goods. The worker can also receive a lump sum payment equal to three times the worker's average weekly wage, up to a maximum of \$1,250.

**D-300.3:
Relocation
Allowances—
Eligibility
Criteria**

Consider these criteria for Relocation Allowances eligibility:

- The dislocated worker is Trade-certified.
- The Trade-certified dislocated worker has an active ES work application on file.
- Suitable work is not available within the normal commuting area.

The Trade-certified dislocated worker must obtain either:

- suitable employment with a reasonable expectation of long-term duration (at least 150 days or five months); **or**
- a *bona fide* offer of such employment in the area of intended relocation that is verified by TWC.

The Trade-certified dislocated worker must submit the formal written request before the beginning of the relocation and:

- before day 425 after petition certification or the date of the most recent total separation; **or**
- before day 182 after completing TAA-approved training.

Time limits for beginning and completing a relocation move expire 182 days after the date of application for relocation allowance or 182 days after the completion of training, whichever is later.

- If the worker uses a commercial mover, the maximum allowable weight for household goods is 18,000 pounds. “Self moves” are also allowable.
- The maximum insurance charge allowed is \$50.
- Temporary living expenses are not reimbursable.
- Expenses are paid only for the Trade-certified dislocated worker and immediate family members residing with the worker.
- Amounts payable by TAA shall be reduced by any amount to which the Trade-certified dislocated worker is entitled or is reimbursed from any other source.

**D-300.3:
Relocation
Allowances—
Eligibility
Criteria
(continued)**

- With prior written approval from TWC, relocation allowances may be made available and approved to include:
 - storage of furniture for a maximum of 60 days; and
 - extension of the relocation move expiration date.

**D-300.4:
Trade
Readjustment
Allowances**

Eligible Trade-certified dislocated workers may receive weekly TRA following exhaustion of their UI benefits. TRA benefits are generally paid only if the worker is enrolled in a TAA-approved training program or has a waiver of the training requirement.

**D-300.5:
Waiver of the
Training
Requirement**

The waiver of the training requirement pertains to TRA eligibility. To be eligible for TRA, a Trade-certified dislocated worker must:

- be in training within eight weeks of the petition certification date or within 16 weeks of his or her qualifying separation, whichever is later; or
- have a waiver of the training requirement based on the same time frame.

The waiver of training form identifies the reason training is not feasible for the Trade-certified dislocated worker. Valid reasons are described in Part C-400.2.3.

Initially, the waiver is issued for up to six months. The waiver of the training requirement is an ongoing assessment. Workforce Center staff must review it at least every 30 days to ensure the reason for the waiver is still valid. Staff must document this review in TWIST Counselor Notes. If there is no longer a valid reason, staff must revoke the waiver. At the end of the waiver period, if training is still not feasible, Workforce Center staff can issue another waiver.

Workforce Center staff must begin developing a reemployment plan within 90 days of the start date of the initial waiver if the Trade-certified dislocated worker is not employed, within two years of retirement, subject to recall, or has a health issue keeping him or her from training.

**D-300.5:
Waiver of the
Training
Requirement
(continued)**

If the Trade-certified dislocated worker does not participate in the 30-day review or reemployment planning process, Workforce Center staff must recommend that the waiver be revoked.

Note: Workforce Development Letter (WD Letter) 29-05, issued May 12, 2005 and entitled “Trade Adjustment Assistance: Waiver of the Training Requirements” provides detailed guidance on the approval and management of the waiver of Trade Adjustment Assistance (TAA) training requirements for Trade Readjustment Allowances (TRA) recipients. WD Letter 29-05 is Appendix F-300 of this guide. It is also available online at:

<http://www.twc.state.tx.us/boards/wdletters/wdletters.html>.

**D-300.6
Health
Coverage Tax
Credit**

HCTC is a federal tax credit program that may pay 65 percent of the premiums paid by eligible Trade-certified dislocated workers receiving TRA benefits who are enrolled in qualified health coverage programs.

Training is an important component of the Trade program and is linked to other Trade benefits. To take advantage of HCTC, the Trade-certified dislocated worker must:

- receive or be eligible to receive TRA payments but must not have exhausted UI; and
- have filed a TRA claim; and
- have enrolled in a TAA-approved training program or have a waiver of the training requirement.

Note: See Part E-100 for more information.

**D-300.7:
Alternative
Trade
Adjustment
Assistance**

ATAA is a benefit for Trade-certified dislocated workers at least 50 years of age who have attained a full-time position different than their previous position within 26 weeks of layoff. The Trade-eligible dislocated worker receives 50 percent of the difference between former and current wages for up to a two-year period (\$10,000 maximum). The current annual wage must be less than \$50,000.

A Trade-certified dislocated worker who begins receiving payments under ATAA cannot receive other TAA benefits and services except for relocation allowances and HCTC. This means a Trade-certified dislocated worker who accepts ATAA is no longer eligible for the training benefit or TRA.

<i>Note:</i> See Part E-200 for more information.

**D-300.8:
Appeals and
Complaints**

Boards must ensure that Workforce Center staff understand the Appeals process as it relates to Trade-funded services and inform Trade-certified dislocated workers. It is important to note that boards must establish procedures to ensure that any negative recommendation is transmitted to the TWC Trade Unit. The Trade Unit makes the final determination on any negative determinations such as denial of training, and will notify the worker of the determination and the Appeal deadlines.

Appeals must be submitted in writing within 14 calendar days of the date of the TWC Trade Unit determination to:

**The Appeals Department, TWC Building
101 East 15th Street, Room 410
Austin, Texas 78778-0001**

Fax: (512) 463-2590

Boards must also ensure that a written copy of the WIA complaint process is provided to and reviewed with the worker.

**D-300.9:
Training
Criteria**

The goal of TAA is to ensure Trade-certified dislocated workers become reemployed as soon as possible. However, if no employment opportunities meet the 80% wage replacement goal, these workers may require retraining.

There is no cap on the cost of trade-funded training either for an individual or for a particular occupation. The term “reasonable

**D-300.9:
Training
Criteria
(continued)**

cost” as used in the criteria for selecting vocational skills or dual-language training means the cost of “like” training in a Board area. The selection of occupational training should not be based solely on the cost of training.

It is assumed that dual-language training will cost more than standard vocational skills training. Boards are encouraged to expand the opportunities for dual-language training in their Board area by encouraging training providers to develop such integrated curriculum and by taking appropriate actions to put the training on the Eligible Training Provider List.

Training is “like” or “similar” for cost-comparison purposes to the extent that it prepares the worker for a similar occupation with similar wage and employment prospects, does so in similar time, and is similar in quality. Moreover, reasonable cost comparisons must be made over the entire course of training. So, for example, it would not be an appropriate assessment of reasonable cost to compare the costs of an ESL program versus a dual-language training program. It would be appropriate to compare the cost of a dual-language program to the total cost of a program comprised of stand-alone ESL followed by stand-alone vocational training, but only if the two programs were similar in quality and in time required to complete.

Workforce Center staff are responsible to assist workers in selecting approvable training. Approvable training is training that meets the criteria in Part D-200.4 above, and is provided by a training provider certified under the Eligible Training Provider System (ETPS). Also, the worker’s assessment must indicate that the worker can successfully complete the training. Approving and referring a worker to training is a local decision (See D-300.8).

If the worker insists on applying for training that Workforce Center staff determines does not meet the approval criteria, and Workforce Center staff is unable to refocus the worker on approvable training, Workforce Center staff may recommend that TWC’s Trade Unit deny the training request.

The assessment of the Trade-certified dislocated worker is critical to both the approval process and the recommendation of a denial of training.

Workforce Center staff must track the trade eligibility criteria and document the assessment information in the TWIST record.

Part D-400 – Training Services

D-400.1: Appropriate for Training?

If the completed IEP indicates the Trade-certified dislocated worker needs training to return to employment, Workforce Center staff and the Trade-certified job seeker must determine the appropriate training.

Use the assessment results, evaluation information, and interview outcomes to answer these questions:

Is suitable employment unavailable for the Trade-certified dislocated worker without training?

Will the Trade-certified dislocated worker benefit from appropriate training, and will the training ensure that the worker is completely “job ready” at the end of the training?

Does a reasonable expectation of employment exist following the training, and was the worker fully informed as to the ability of the occupations to meet the 80% wage replacement goal?

Is training available at a reasonable cost? (Reminder: Trade-certified trainees must not pay for any required training costs.)

Does the Trade-certified dislocated worker have qualifications, capabilities, and the background to undertake and complete the training successfully?

Note: If the answer is “yes” to these questions, a training referral may be appropriate.

Additional approval considerations:

- Training must be full time:
 - Stand-alone English as a Second Language (ESL), Adult Basic Education (ABE), or General Education Development (GED) programs should be 30 hours, where available;
 - 12 hours per semester for a credit-hour program; or
 - full time as defined by the training provider.

**D-400.1:
Appropriate for
Training?
(continued)**

- Training may last up to 104 weeks, but if remedial training is required, Workforce Center staff may recommend, in consultation with TWC's Dislocated Worker Unit, an additional 26 weeks of training.
- Training must be conducted within the United States.
- The proposed training program must provide all the skills and requirements upon completion which are needed for the worker to be job ready. For example if the occupation for which the proposed training is preparing the worker requires a license, then the training program must include gaining the license.

**D-400.2:
Training
Referral**

When making a training referral, Workforce Center staff:

- assist in selecting the training based on the Board's targeted or demand occupations, or an OJT, customized training opportunity or where a bona fide job offer exists; and
- provide information regarding the wages of such occupations and their ability to assist the worker in meeting the 80% wage replacement goal.
- provide information on all area training providers on the ETPS that provide training for the selected occupation or are Board-approved to provide remedial or other short-term prevocational skills training.
- Ensure that the selected training meets the guidance on "reasonable cost" as described in Section D-300.9;

Note: For more information on ETPS and a list of approved training providers, visit TWC's Web site at:

<http://tpcs.twc.state.tx.us/TPCS/jsp/wiahome.htm>.

- the training provider must send Workforce Center staff the training program outline; and
- Workforce Center staff must enter the referral into TWIST in the TAA Program Detail.

**D-400.3:
Types of
Training**

Remedial Training consists of:

English as a Second Language (ESL)

Adult Basic Education (ABE)

General Educational Development (GED).

Remedial training is appropriate if required for the Trade-certified dislocated worker to be job ready in the selected occupation.

Short-term Prevocational Skills Training prepares individuals for suitable employment or appropriate training referrals. It is generally less than six months in duration and must be tied to specific targeted or demand occupational training. **Example:** A short-term computer literacy class may apply to various occupations.

Vocational or Occupational Skills Training is for skilled workers or craftspersons such as plumbers, electricians, auto mechanics, air conditioning and heating repair persons, bookkeepers, and office assistants. Use your Board's list of targeted or demand occupations in helping the skilled worker.

Dual-Language Training (Integrated Vocational Skills Training or Contextual Learning) provides necessary vocational skills and remedial education together in a single integrated curriculum. This training blends ESL and other training with vocational skills training appropriate for LEP individuals (see Part C-400.2.5).

OJT is conducted by an employer. This type of training provides knowledge and skills essential for job performance. The duration of the training is based on the time required for the individual to become proficient in the occupation. Under OJT, the Board reimburses employers up to 50 percent of the trainee's wage rate.

Customized Training is designed to meet the special requirements of an employer or group of employers. Like OJT, the employer must commit to hiring an individual who successfully completes the training. Customized training for Trade-certified dislocated workers must meet the same criteria used for WIA.

**D-400.3:
Types of
Training
(continued)**

Note: For both OJT and Customized Training, the employer must be identified and skill requirements must be known. The employer plays a major role in the development of the training or curriculum. Review your Board's OJT and Customized Training contracts.

**D-400.4:
Training
Program
Amendment**

Boards should make changes to an approved training program only for justifiable reasons. Decisions about changes should involve the Trade-certified trainee, Workforce Center staff, and the training provider.

If the Trade-certified trainee or training provider makes a substantial change to the training program curriculum or cost, the trainee must return to the Workforce Center to update his or her IEP. Workforce Staff e-mail the updated IEP to the training provider with a request for a training program amendment.

**D-400.5:
Follow-up
Services During
and After
Training**

After the Trade-certified dislocated worker begins participating in training activities, Workforce Center staff must follow up with the worker on a regular basis. A good time to assess progress is when the worker comes to the Workforce Center to sign for supportive service items (e.g., bus tokens and gas vouchers).

Workforce Center staff may use the following criteria to evaluate the trainee's progress:

Is the Trade-certified dislocated worker progressing in his or her class work?

How are the Trade-certified dislocated worker's grades?

Does the Trade-certified dislocated worker need other supportive services?

What else can you, as a Workforce Center staff member, do to assist the Trade-certified dislocated worker?

**D-400.5:
Follow-up
Services During
and After
Training
(continued)**

Supportive Services: Continue supportive services after the Trade-certified dislocated worker successfully completes the training, if appropriate. Workers often need supportive services until they get a job and start receiving paychecks. (Review your Board's supportive services policy for details.)

Job Development: Identify available positions in your workforce area with the help of your job developers or the Workforce Center's Business Services Unit (BSU). Work with these staff members to create a good job match between the employer and the job seeker. Coordinate the employer's requirements with the newly obtained skills and credentials of the job seeker to create a win-win situation for both of your customers—the employer and the job seeker. On-the-Job Training is considered a particularly valuable resource for trade-certified workers. A creative Business Services representative may find that employers are more willing to establish an on-going OJT program if short-term pre-vocational skills training, remedial education, or intensive dual-language training precedes the OJT.

Job Readiness: Provide job readiness workshops that include topics such as interviewing skills, dressing for success, or resume writing.

Gather Performance Information: After the Trade-certified dislocated worker finds employment, continue regular contact to gather additional information. Enter all information into TWIST.

**D-400.6:
Common
Measures**

All programs administered by the DOL's Employment and Training Administration will be subject to a Common Measures policy. The programs include TAA, WIA Dislocated Worker services, and National Emergency Grants.

These are the adult measures that will apply to TAA:

- Entered Employment
- Employment Retention
- Earnings Increase
- Efficiency

When the Common Measures policy becomes effective, separate guidelines will be issued for each program.

D-400.6:
Common
Measures
(continued)

Currently, all TAA participants co-enrolled in WIA are counted in performance under the WIA Dislocated Worker performance measures.

Dislocated Worker Common Measures description and calculation:

Entered Employment

Of those **not** employed at the date of participation:

of participants employed in the first quarter after exit
 # of participants who exit during the quarter

Retention

Of those employed in the first quarter after exit:

of participants employed in
both the second and third quarters after exit
 # of participants who exit during the quarter

Earnings Increase

Of those employed in the first quarter after exit:

Earnings in the first quarter after exit
minus earnings in the quarter prior to the date of participation
 Earnings in the quarter prior to the date of participation

and

Earnings in the third quarter after exit
minus earnings in the first quarter after exit
 Earnings in the first quarter after exit

Efficiency

Program appropriation level
 # of program participants

Note: For more information about Common Measures and performance, review Training and Employment Guidance Letter (TEGL) 15-03 available at:
http://ows.doleta.gov/dmstree/tegl/tegl2k3/tegl_15-03.html.

Also, it is important to review your Board's follow-up policy.

**TEXAS WORKFORCE COMMISSION
EXPLANATION OF SERVICES**

Name

Last, First, Middle SSN Date of Separation

Petition Number

Date of Certification

This is to advise you that as an affected worker under the Trade Act of 1974, as amended, you may receive services available in your Workforce Center. Please check the services listed below that you are interested in now or may be interested in at a later date.

- [] 1. **Job Placement** — Texas Workforce Center placement personnel will work with you during your job search in an effort to place you in a job based on your background and experience with pay comparable to area jobs that assists in allowing you to meet an 80% wage replacement goal.
- [] 2. **Employment counseling** — Texas Workforce Center staff will advise you about the local labor market and the salary you can expect to receive for various jobs in the area. Other services may include skills testing in order to better assess your aptitudes, interests and capabilities for jobs available in the area. You may be enrolled in a job search seminar if appropriate.
- [] 3. **Training** — The local Workforce Board will determine with your active participation and that of the local Workforce Center staff, if training is necessary to enable you to obtain suitable employment defined as one that pays 80% or more of your previous wages. When training is determined to be necessary, you may be able to have the costs of such training paid on your behalf if funding is available. The Workforce Center staff will assist you in locating feasible and appropriate training. Vocational training cannot exceed 104 weeks, unless remedial education is identified in your Individual Employment Plan then an additional 26 weeks may be available. To receive Trade Readjustment Allowances, you must be enrolled in an appropriate training program within 8 weeks of the petition certification date, or within 16 weeks of your most recent qualifying separation from adversely affected employment, or have completed an approved or approvable training program, or have received a written certification waiving the training requirement. You must make a bona fide request for training within 210 days of your qualifying separation or the certification date of the petition, whichever is later, to be eligible for extended TRA benefits.
- [] 4. **Job Search Allowances** — Financial assistance may be available to assist you in seeking employment in other areas of Texas or the United States. Your written application for this assistance must be submitted before your job search trip begins. You must apply within 365 days of your separation or the petition certification date, whichever is later, or within 182 days after completion of training.
- [] 5. **Relocation Allowances** — Financial assistance may be available to help relocate you, your family and your household goods. Once you have obtained bona fide employment in the U.S., you must make a written application for Relocation Assistance before you relocate. This application must be made within 425 days after the date of your qualifying separation or the petition certification date, whichever is later, or 182 days after completion of training.
- [] 6. **Alternative Trade Adjustment Assistance (ATAA)** — (ATAA certified petitions only). ATAA provides eligible individuals over the age of 50 who obtain new employment within 26 weeks of their separation with a wage subsidy to help bridge the salary gap between their old and new employment.
- [] 7. **Health Coverage Tax Credit (HCTC)** — Federal tax credits are available to assist participants by covering up to 65% of the monthly health insurance premium costs paid by an eligible participant.

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Please identify "targeted occupation" as defined by the Board:

I hereby certify that I have been informed of all the services described above, including the application requirements and time limits, have indicated which of these services I am interested in now or may be interested in at a later date, and have been given copies of appropriate information. If completed, this form will serve as a bona fide request for training.

Worker Signature

Date Signed

Local Workforce Center Representative

Date Signed

Individuals may receive, review, and correct information that TWC collects about the individual by emailing to open.records@twc.state.tx.us or by writing to TWC Public Information, Rm 264, 101 East 15th, Austin, TX 787780001. TWC is an equal opportunity employer/program. Auxiliary aids and services are available, upon request, to individuals with disabilities.