

**NORTH AMERICAN FREE TRADE AGREEMENT
TRANSITIONAL ADJUSTMENT ASSISTANCE
(NAFTA-TAA)
APPEALS TECHNICAL ASSISTANCE GUIDE**

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NORTH AMERICAN FREE TRADE AGREEMENT TRANSITIONAL ADJUSTMENT ASSISTANCE APPEALS TECHNICAL ASSISTANCE GUIDE

PURPOSE

This Technical Assistance Guide was developed to assist appellate bodies throughout the States that are responsible for issuing eligibility decisions on North American Free Trade Agreement (NAFTA)-Transitional Adjustment Assistance (TAA) benefits. **This Guide supplements the Technical Assistance Guide developed for appeals decisions relating to Trade Adjustment Assistance (TAA) benefits.** The goal is to provide program information for hearing officers.

This document is a quick reference guide that illustrates the application of provisions of the statute authorizing the NAFTA-TAA program and the operating instructions (final regulations have not been published) issued by the Department of Labor (the Department). Some of the major programmatic issues have been identified and isolated into scenarios for clarification. The specific statutory section as well as the pertinent operating instruction also are provided.

The issues presented are specifically related to the payment of TRA under the NAFTA-TAA program. The scenarios presented are provided to give the reader a “live or dynamic” situation which occurs frequently in contrast to a “static” situation when reading the statute and the operating instructions. To assist the reader in locating particular types of issues, an index of each scenario with a cross reference phrase or highlight of the issue being presented is included at the end of this document.

This Guide does not supersede the statute or operating instructions. Furthermore, the Guide is not to be cited as authority for State decisions. It is only an illustrative tool to be used to enhance or to develop the reader’s understanding of issues involved in the NAFTA-TAA program, specifically issues related to the payment of TRA.

NAFTA-TAA PROGRAM

Authority:

Title V of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993; Subchapter D of Chapter 2 of Title II of the Trade Act of 1974, as amended, 19 U.S.C. 2231; Operating Instructions for Implementing the Amendments to the Trade Adjustment Assistance for Workers Program in Title V of the NAFTA Implementation

Act in General Administration Letter (GAL) No. 7-94 and Change 1 and Change 2; and Training and Employment Guidance Letter (TEGL) No. 7-93 and Change 1 and Change 2.

Background:

The NAFTA-TAA program provides benefits to adversely affected workers who are totally or partially separated from employment with their firm as a result of increased imports from or shifts in production to Canada or Mexico. The NAFTA-TAA program is similar to the regular Trade Adjustment Assistance (TAA) program, although it differs in several ways. While the NAFTA-TAA program provides the same benefits available under the regular TAA program to workers in primary firms, it also provides other benefits to dislocated workers in secondary firms, i.e., firms which supply materials to or assemble or finish products of the primary firms. Workers in primary firms receive these benefits under Chapter 2 of Title II of the Trade Act (the Act), but workers in secondary firms receive these benefits under Title III of the Job Training Partnership Act (JTPA) (also known as the Economic Dislocation and Worker Adjustment Act (EDWAA)). **(This guide is applicable only to NAFTA-TAA benefits under Chapter 2 of Title II of the Trade Act and not to benefits under Title III of JTPA (EDWAA).)**

TRADE READJUSTMENT ALLOWANCES (TRA)

TRA is available to eligible individuals who are adversely affected workers covered under a certification of group eligibility to apply for NAFTA-TAA. Certification of group eligibility means that a specified group of workers of a firm or appropriate subdivision of a firm has been certified by the Department as eligible to apply for NAFTA-TAA.

The eligibility requirements for TRA under the NAFTA-TAA program are mostly the same as under the regular TAA program. The requirements under the NAFTA-TAA program that differ from the regular TAA program are described briefly below:

1. The NAFTA-TAA program requires an adversely affected worker to be enrolled in a training program approved within specified time limits to be eligible for TRA.
2. The NAFTA-TAA program allows the time limits for enrollment in training to be extended for a period not to exceed 30 days in cases of extenuating circumstances.
3. The NAFTA-TAA program does not permit waivers of the requirement that a worker must be enrolled in or participating in training to receive TRA.
4. The NAFTA-TAA program does not require a worker to apply for training within the 210-day time limit to be eligible for additional weeks of TRA.

SECTION I

Time Limits for Enrollment in Training

(19 U.S.C. 2331(d)(3)(B); Sec. 250(d)(3)(B) of the Trade Act; GAL No. 7-94 and Change 2)

In order for a worker to qualify for TRA under the NAFTA-TAA program, the worker must be enrolled in a training program approved by the State agency under Section 236(a) of the Trade Act by the later of:

(1) the last day of the 16th week following such worker's most recent qualifying separation, or

(2) the last day of the 6th week after the week in which the Secretary issues a certification covering such worker.

(NOTE: In the settlement of the U.S. District Court decision in Baker v. Reich between the Department and the United Auto Workers (UAW), approved on September 9, 1996, the Department revised its original definition for "initial unemployment compensation benefit period" (as provided in the statute in (1) above) from "first benefit period" to "the period beginning with the first week following a worker's most recent qualifying separation due to import competition from or production shift to Canada or Mexico." This new time limit was issued in Change 2 to GAL No. 7-94.)

Thus, the NAFTA-TAA program requires a worker to be enrolled in a training program approved by the State agency, which begins within 30 days of the approval date, by the later of the last day of the 16th week following his/her most recent qualifying separation, or the last day of the 6th week after the week in which a certification was issued by the Secretary to be eligible for TRA. A 30-day extension may be granted for extenuating circumstances. The regular TAA program, however, does not require a worker to be enrolled in a training program within a specified time period to be eligible for TRA. To be eligible for TRA under the regular TAA program, a worker must be enrolled in or participating in an approved training program, or must have completed an approved training program, or must have received a written notice from the State agency waiving the participation in training requirement.

Four scenarios follow which illustrate and clarify this issue:

SCENARIO 1

An adversely affected worker has a (first) most recent qualifying separation on February 26, 1999, eight weeks after the group certification was issued on December 31, 1998.

The worker has 16 weeks from the separation, until the last day of the week ending June 19, 1999, to be enrolled in an approved training program. The worker makes a bona fide application for a 52-week training program which is scheduled to begin on May 31, 1999. The application is approved by the State agency on May 6, 1999, and the training institution has furnished written notice to the State agency that the training will begin on May 31, 1999 (within 30 days of the date of approval). The worker was enrolled in training approved within the required 16-week period and, therefore, may be eligible for TRA after UI is exhausted.

SCENARIO 2

An adversely affected worker has a (first) most recent qualifying separation on May 7, 1999, one week after the group certification was issued on April 28, 1999. The worker has 16 weeks from the separation, until the last day of the week ending August 28, 1999, to be enrolled in an approved training program. The worker applies for a 52-week training program which is scheduled to begin on September 6, 1999. The application is approved by the State agency on August 30, 1999, and the training institution has furnished written notice to the State agency that the training will begin on September 6, 1999 (within 30 days of the date of approval). The worker was not enrolled in training approved within the required 16-week period and, therefore, will not be eligible for TRA. (No extension of the time for enrollment due to extenuating circumstances was granted.)

SCENARIO 3

An adversely affected worker has a (first) most recent qualifying separation on January 29, 1999, 20 weeks before the group certification was issued on June 18, 1999. The worker's 16-week period following the most recent qualifying separation ended on May 22, 1999 (four weeks before the group certification was issued). The worker has six weeks after the week the group certification was issued, until the last day of the week ending July 31, 1999, to be enrolled in an approved training program. The worker applies for a 52-week training program which is scheduled to begin on July 26, 1999. The application is approved by the State agency on July 14, 1999, and the training institution has furnished written notice to the State agency that the training will begin on July 26, 1999 (within 30 days of the date of approval). The worker was enrolled in training approved within the required 6-week period and, therefore, may be eligible for TRA after UI is exhausted.

SCENARIO 4

An adversely affected worker has a (first) most recent qualifying separation on February 5, 1999, one week after the group certification was issued on January 27, 1999. The worker was recalled by the employer on May 24, 1999, the last week of the 16-week

period following the most recent qualifying separation. The worker has a (second) most recent qualifying separation on July 30, 1999, and a new 16-week period, until the last day of the week ending November 20, 1999, to be enrolled in an approved training program. The worker applies for a 52-week training program which is scheduled to begin on September 6, 1999. The application is approved by the State agency on August 24, 1999, and the training institution has furnished written notice to the State agency that the training will begin on September 6, 1999 (within 30 days of the date of approval). The worker was enrolled in training approved within the required 16-week period after the most recent qualifying and, therefore, may be eligible for TRA after UI is exhausted.

SECTION II

Extenuating Circumstances (For Extension Of Time Limits For Enrollment)

(19 U.S.C 2331(d)(3); Sec. 250(d)(3) of the Trade Act; GAL No. 7-94 and Change 2)

In cases of extenuating circumstances relating to enrollment in a training program, the State agency may extend the time for enrollment for a period not to exceed 30 days.

The NAFTA-TAA program allows for the time limits for enrollment in an approved training program to be extended for a period not to exceed 30 days in cases of extenuating circumstances. The regular TAA program does not have a time limit for enrollment in training, and, therefore does not provide for such an extension. (Under both programs, a worker is considered to be enrolled in training when the application for training is approved by the State agency and the training institution furnishes written notice to the State agency that the worker has been accepted in the training program which is to begin within 30 calendar days of the date of such approval.)

Section 250(d)(3) of the Act provides that in cases of extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for a period not to exceed 30 days. The operating instructions in Section 4 of GAL No. 7-94 provides that the authority to grant 30-day extensions to workers is delegated to States or State agencies as one of their responsibilities under Section 239 of the Act. The application of this 30-day grace period should be used only in rare instances. ***The strict application of the time limit for enrollment in training and the limited application of the extension due to extenuating circumstances requires that workers certified for NAFTA-TAA be informed promptly of the time limits by the State agency when a NAFTA-TAA certification is issued.***

It is anticipated that there will be situations beyond the worker's control where the worker is unable to enroll in training by the later of the last day of the 16th week following the worker's most recent qualifying separation or the 6th week after the week that a certification was issued. Such situations could involve training programs that are abruptly canceled, or circumstances where the first available enrollment date is past the deadline. Other situations could involve injury or illness which affected the ability of a worker to enroll in training, or where the State agency failed to inform a worker of the time provisions for enrollment in training.

Two scenarios follow which illustrate and clarify this issue:

SCENARIO 5

An adversely affected worker has a (first) most recent qualifying separation on February 12, 1999, three weeks after the group certification was issued on January 22, 1999. The worker has 16 weeks from that separation, until the last day of the week ending June 5, 1999, to be enrolled in an approved training program. The worker applies for a 52-week training program which is scheduled to begin on May 31, 1999. The application is approved by the State agency on May 20, 1999, and the training institution has furnished written notice to the State agency that the training will begin on May 31, 1999 (within 30 days of the date of approval). The training program was canceled on May 26, 1999, due to the unexpected retirement of the instructor, and is rescheduled to begin on June 28, 1999. The worker was, consistent with section 250(d)(3) of the Trade Act, granted a 30-day extension to enroll in training previously approved within the required 16-week period and, therefore, may be eligible for TRA after UI is exhausted.

SCENARIO 6

An adversely affected worker has a (first) most recent qualifying separation on March 5, 1999, one week after the group certification was issued on February 25, 1999. The worker was recalled by the employer on June 21, 1999, the last week of the 16-week period following the most recent qualifying separation. The worker has a (second) most recent qualifying separation on July 30, 1999, and a new 16-week period, until the last day of the week ending November 20, 1999, to be enrolled in an approved training program. The worker was never notified of the time limits to be enrolled in training to be eligible for TRA and applies for a 52-week training program which is scheduled to begin on January 3, 2000. The application is approved by the State agency on December 27, 1999, and the training institution has furnished written notice to the State agency that the training will begin on January 3, 2000 (within 30 days of the date of approval). The worker was not enrolled in training approved within the second 16-week period and the 30-day extension due to extenuating circumstances (which could have been granted in this case) which will have ended on December 20, 1999. The worker is not eligible for TRA (but is still eligible to participate in the approved training).

SECTION III

Prohibition of Training Waivers

(19 U.S.C. 23319(d)(3)(A); Sec. 250(d)(3)(A) of the Trade Act; GAL No. 7-94)

Provisions of Sections 231(a)(5)(C) and 231(c) of the Trade Act, authorizing the payment of TRA upon a finding that it is “not feasible or appropriate” to approve a training program for a worker, are not applicable to payment of TRA under the NAFTA-TAA program.

The NAFTA-TAA program prohibits waiver of the requirement that a worker must be enrolled in approved training to be eligible for TRA. The regular TAA program permits waiver of the participation in training requirement and allows a worker to receive basic TRA if approval of training for the worker is not feasible or appropriate for the worker. (Waiver of the participation in training requirement under the regular TAA program applies only to basic TRA since a worker must actually be participating in an approved training program to be entitled to additional TRA.)

Section 250(d)(3)(A) of the Act specifies that the provisions of Sections 231(a)(5)(C) and 231(c), authorizing the payment of TRA upon a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable under “this subchapter.” The operating instructions in GAL No. 7-94 provide the same language as in Section 205(d)(3)(A) but include: “*Thus, in order for a worker to qualify for TRA under the NAFTA-TAA program, the worker must be enrolled in training approved section 236(a) of the Trade Act.*”

Two scenarios follow which illustrate and clarify this issue:

SCENARIO 7

An adversely affected worker has a (first) most recent qualifying separation on August 6, 1999, six weeks after the group certification was issued on June 23, 1999. The worker has 16 weeks from the separation, until the last day of the week ending November 27, 1999, to be enrolled in an approved training program. The worker applies for a 52-week training program which is not available until January 24, 2000. (No waiver of enrollment in training can be granted under the NAFTA-TAA program when training is not feasible or appropriate for the worker.) In this case, however, a 30-day extension is granted for extenuating circumstances, because the training program was not available before the end of the 16-week period. The application is approved by the State agency on December 27, 1999, and the training institution has furnished written notice to the State agency that the training will begin on January 24, 2000 (within 30 days of the date of approval). The worker was enrolled in an approved training program within the required 16-week period and the 30-day extension and,

therefore, may be eligible for TRA after UI is exhausted.

SCENARIO 8

An adversely affected worker has a (first) most recent qualifying separation on March 5, 1999, three weeks after the group certification was issued on February 11, 1999. The worker has 16 weeks, until the last day of the week ending June 26, 1999, to be enrolled in an approved training program. The worker applies for a 52-week training program which is scheduled to begin on September 6, 1999. The application is approved by the State agency, but the worker will not be eligible for TRA because he/she will not be enrolled in training approved within the required 16-week period and the 30-day extension due to extenuating circumstances (which could have been granted in this case) which will have ended on July 26, 1999. (No waiver of enrollment in training can be granted under the NAFTA-TAA program when training is not feasible or appropriate for the worker.) The worker is not eligible for TRA (but is still eligible to participate in the approved training).

SECTION IV

210-Day Requirement for Additional TRA

(19 U.S.C. 2331(d)(3)(B); Sec. 250(d)(3)(B); GAL No. 7-94 and Change 2)

The 210-day requirement in §617.15(b)(2) shall not apply since there are separate time periods for enrollment in training in order to qualify for TRA under the NAFTA-TAA program.

The NAFTA-TAA program does not require that a worker must make a bona fide application for training within the 210-day time limit required under the regular TAA program to be eligible for additional weeks of TRA, since a worker must be enrolled in a training program approved within the 16/6-week time limits (see Section I), with no waiver allowed. Under the regular TAA program, to be eligible for TRA for additional weeks, a worker must make a bona fide application for training within 210 days after the date of the first certification under which the worker is covered, or, if later, within 210 days after the date of the worker's most recent partial or total separation under such certification.

Section 250(d)(3)(B) of the Act provides that workers shall be provided TRA described in Sections 231 through 234, except that *"notwithstanding the provisions of section 233(b),"* the worker to qualify for TRA under the NAFTA-TAA program shall be enrolled in a training program approved within the 16/6-day time limits. Section 233(b) of the Trade Act, as cited above, provides that: "A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1)."

The operating instructions in Section 7 of Change 2 to GAL No. 7-94 specify that:

The 210-day rule under 19 U.S.C. 2293(b) is not applicable to individuals seeking retroactive relief under this settlement [Baker v. Reich]. A worker may receive basic and additional TRA benefits only during periods of participation in a TAA-approved training program or may continue to receive only basic TRA after completion of a TAA-approved training program.

Two scenarios follow which illustrate and clarify this issue:

SCENARIO 9

An adversely affected worker has a (first) most recent qualifying separation on February 26, 1999, six weeks after the group certification was issued on January 13, 1999. The worker has 16 weeks from that separation, until the last day of the week ending June 19, 1999, to be enrolled in an approved training program. The worker makes a bona fide application on May 3, 1999, for a 78-week training program which is scheduled to begin on May 31, 1999. The application is approved by the State agency on May 20, 1999, and the training institution has furnished written notice to the State agency that the training will begin on May 31, 1999 (within 30 days of the date of approval). (The worker had made an application for the training program within 210 days after the date of his/her (first) most recent partial or total separation, but it is not relevant since it does not apply to eligibility for TRA under the NAFTA-TAA program.) The worker may be eligible for basic and additional TRA after UI is exhausted.

SCENARIO 10

An adversely affected worker has a (first) most recent qualifying separation on February 5, 1999, one week after the group certification was issued on January 27, 1999. The worker was recalled by the employer on February 22, 1999, without having made a bona fide application for training before the end of the final week of the 16-week period following his/her most recent qualifying separation. The worker has a (second) most recent qualifying separation on August 6, 1999, and a new 16-week period, until the last day of the week ending November 27, 1999, to be enrolled in an approved training program. The worker makes a bona fide application on October 4, 1999, for a 104-week training program which is scheduled to begin on November 1, 1999. The application is approved by the State agency on October 22, 1999, and the training institution has furnished written notice to the State agency that the training will begin on November 1, 1999 (within 30 days of the date of approval). (The worker had made an application for the training program within 210 days after the date of his/her (second) most recent partial or total separation, but it is not relevant since it does not apply to eligibility for TRA under the NAFTA-TAA program.) The worker may be eligible for basic and additional TRA after UI is exhausted.

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