

U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA / OWRAP
	CORRESPONDENCE SYMBOL TET
	DATE April 22, 1999

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 7-93, Change 2

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES
 ALL STATE JTPA LIAISONS
 ALL STATE WORKER ADJUSTMENT LIAISONS
 ALL ONE-STOP CAREER CENTER
 SYSTEM LEADS

FROM : DAVID HENSON
 Director
 Office of Regional Management

David Henson

SUBJECT : Secondary Worker Provisions Related to the North
 American Free Trade Agreement (NAFTA)
 Implementation Act

1. Purpose. To provide additional policy and guidelines for making services available to secondarily-affected workers under the provision of the Statement of Administrative Action (SAA) which accompanied the NAFTA Implementation Act.

2. References.

- a. The NAFTA Implementation Act of 1993. (Pub.L. 103-182).
- b. Statement of Administrative Action.
- c. Job Training Partnership Act of 1983, as amended. (Pub.L. 100-418)
- d. General Administration Letter (GAL) No. 7-94, dated December 28, 1993, entitled "Operating Instructions for Implementing the Amendments to the Trade Adjustment Assistance for Workers Program in Title V of the North

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

American Free Trade Agreement (NAFTA) Implementation Act.”

e. TEGL No. 7-93, dated April 19, 1994; and TEGL No. 7-93, Change 1, entitled "Transitional Adjustment Assistance Provisions Related to the Implementation of NAFTA."

f. 20 CFR 631.3(j).

3. Background. The Department of Labor (DOL), in the SAA accompanying the NAFTA Implementation Act, undertook certain commitments with respect to implementing the requirements of the bill. One of these commitments is the provision of *Assistance to Workers in Secondary Firms*.

Part A, Section 2 of the SAA provides that:

Workers in firms that are indirectly affected by NAFTA would be eligible to receive assistance pursuant to the national grant program administered by the Secretary of Labor under Part B of Title III of the Job Training Partnership Act (JTPA). The Secretary will reserve funds for this purpose.

Workers in secondary firms will receive the same rapid response, basic readjustment and employment services, job search and relocation assistance, training and income support available to workers in directly affected firms.

These provisions recognize that worker dislocations resulting from trade with Canada and/or Mexico following the implementation of NAFTA may affect workers beyond those eligible for assistance under the existing NAFTA-Transitional Adjustment Assistance (NAFTA-TAA) Program. Such workers should be able to receive the same reemployment assistance as those workers who are eligible under TAA and NAFTA-TAA. The SAA provides for assistance to these "secondarily-affected workers" under Title III of the JTPA.

The provisions of the SAA are not encompassed within the regulatory and implementation guidance of Title V of the NAFTA Implementation Act. Therefore, the Employment and Training Administration (ETA) of DOL, as the federal agency responsible for administering the TAA, NAFTA-TAA and JTPA Title III programs, has previously provided guidance on the secondary worker provisions (GAL No. 7-94, TEGs 7-93 and 7-93, Change 1, and in the JTPA regulations at 20 CFR 631.3(j)). This TEGL provides additional guidelines for implementing the provisions of the SAA regarding secondary workers.

This TEGL recognizes that TAA and NAFTA-TAA staff at the State and federal levels will have primary responsibility for evaluating and determining the "trade-

relatedness” of worker dislocations; and Title III program operators will have primary responsibility for organizing and providing comprehensive reemployment assistance to eligible workers. As a result, ETA expects that State TAA, NAFTA-TAA and Title III staff will work collaboratively in establishing a process that provides timely, responsive assistance to the workers covered by the SAA.

Many “secondarily-affected” workers will exist in smaller worker groups and may not be aware of the type(s) of assistance available to them. Therefore, special outreach efforts will need to be implemented.

4. Definitions. Generally, terms used in these guidelines are identical to and consistent with terms in Title V of the NAFTA Implementation Act, which amended Chapter 2 of Title II of the Trade Act of 1974 by adding Subchapter D establishing the NAFTA-TAA program; and with the JTPA. Regulations for the Trade Act of 1974 and the JTPA Title III are published at 20 CFR Part 617 and Parts 627-631, respectively. However, certain terms and references included in the SAA deserve clarification and are defined below, as follows:

Primary Firms: Firms directly affected by increased imports from, or shifts of production to, Canada and/or Mexico.

Primarily-Affected Workers: A group of workers at a primary firm.

Secondary Firms:

Supplier Firms: Firms that supply materials and/or components to a primary firm.

Upstream Producers: Firms that assemble or finish products made by primary firm.

Family Farms: Family farmers or farmworkers who do not meet the “group of worker” eligibility requirements.

Secondarily-Affected Workers are:

- A group of workers employed by supplier firms;
- A group of workers employed by upstream producers; and
- Farmers or farmworkers employed by family farms.

Dislocated Worker: Eligible dislocated worker is defined at Section 301(a) of the JTPA and 20 CFR 631.3. For purposes of this directive, all primarily-affected and secondarily-affected workers who have received a notice of termination or layoff, are employed at a facility that has made a public announcement of planned closure, or have been terminated from employment, are dislocated workers and may be eligible for basic readjustment assistance under JTPA Title III. It should be noted that they must satisfy citizenship/right to work and selective service registration requirements that apply to the use of JTPA funds.

5. Expectations Regarding the Service Process for Affected Workers.

Determinations of whether a group of workers is primarily-affected, secondarily-affected, or not affected by increased imports from, or shifts of production to, Canada and/or Mexico will be based on a petitioning and evaluation process described in **Attachment A**. The initiation of JTPA Title III services should not be dependent on completion of the evaluation by the Department of a petition for designation as primarily- or secondarily-affected workers. Basic readjustment services should be initiated through Rapid Response, Worker Profiling and Reemployment Services (WPRS), or other appropriate mechanisms at the local level. Therefore:

- (1) Once the State NAFTA-TAA coordinator receives a petition, a copy of the petition, or other appropriate notification, will be immediately provided to the State Dislocated Worker Unit (DWU).
- (2) The DWU will verify whether Rapid Response or other assistance has been provided to workers affected by the referenced layoff and if the workers included in the petition are receiving reemployment services. If workers are not receiving services, the DWU in conjunction with the appropriate substate area(s) will initiate outreach and other actions to ensure that affected workers receive program services.
- (3) Once the Department makes a final determination of whether the workers covered in a petition are primarily- or secondarily-affected workers, it will notify both the State NAFTA-TAA coordinator and the DWU.
 - (a) For primarily-affected workers, the State NAFTA-TAA coordinator will develop a plan with the DWU for providing needed assistance to the covered workers. This plan will include, for each worker, an assessment of the need for training to return to employment and dual enrollment of the workers in the NAFTA-TAA and Title III programs.

- (b) For secondarily-affected workers, the DWU should confirm the Title III enrollment status of the covered workers and verify whether assessments have been completed and reemployment plans developed for each enrolled worker.

The provision of services to eligible workers shall conform to the requirements and procedures of the program that is the funding source for the service. For example, where the cost of training is being paid with NAFTA-TAA program funds, the NAFTA-TAA program requirements will be used to determine whether the individual worker needs training and if a specific training program should be approved. Likewise, where the cost of training is being paid with JTPA Title III program funds, JTPA Title III State and local program requirements will govern.

States are strongly encouraged, within the discretionary policy development authority allowed under the NAFTA-TAA and JTPA Title III regulations, to establish common requirements and procedures between the NAFTA-TAA and Title III programs regarding assessing the need for training and approved areas of training.

6. Guidance on How to Qualify Secondarily-Affected Workers. The ETAs Office of Trade Adjustment Assistance (OTAA) in partnership with the State NAFTA-TAA Coordinator will conduct a fact-finding investigation to determine if a worker group qualifies as secondarily-affected. Guidelines for the investigative process to determine qualification as a secondarily-affected worker group are included in **Attachment A**.

7. Income Support Available to Secondarily-Affected Workers. As described in Section 5 of this guidance, JTPA Title III funds will be used to provide Rapid Response, basic readjustment and employment services, job search and relocation assistance, and training to eligible secondarily-affected workers based on their need for such assistance to secure new employment. However, the SAA requires that secondarily-affected workers who are in approved training will qualify for income support (needs related payments) during their participation in training consistent with the provisions of the NAFTA-TAA program.

The NAFTA-TAA program provides eligible primarily-affected workers, enrolled in an approved training program, up to 52 weeks of income support (trade readjustment allowances (TRA)) at an amount equal to the worker's most recent weekly unemployment insurance (UI) benefit level following the worker's exhaustion of regular UI benefits. To be eligible for TRA, the worker must be enrolled in an approved training program within 16 weeks of the worker's most recent qualifying separation or, if later, 6 weeks after the Department has issued a certification of trade impact covering the worker. Enrollment time limits may be extended for a period not to exceed 30 days in cases of extenuating circumstances.

Since the costs of income support (needs-related payments) to eligible secondarily-affected workers will be paid with JTPA Title III funds, the JTPA Title III provisions at 20 CFR 631 must be used to establish eligibility. Therefore, if the State or local area uses:

- < JTPA Title III formula funds to pay for needs-related payments, then the worker must be enrolled in an education or training activity within thirteen weeks of layoff or, if later, 8 weeks after the worker is informed that a short-term layoff will exceed 6 months.
- < JTPA Title III National Reserve Account (NRA) grant funds to pay the needs-related payment costs (see **Attachment C**), then the worker must be enrolled in an education or training activity within 16 weeks of the last layoff or within 6 weeks following the effective date of the grant award.

Using JTPA Title III funds to provide income support (needs-related payments) to eligible secondarily-affected workers in accordance with the provisions of the NAFTA-TAA program (i.e., up to 52 weeks at the worker's most recent weekly UI level following the worker's exhaustion of regular UI benefits) does not preclude the State or substate from using JTPA Title III formula funds to provide needs-related payments beyond the 52 week period in accordance with substate area policies. As described in **Attachment C**, JTPA Title III NRA funds are available to cover the costs of income support to secondarily-affected workers under the provisions of the NAFTA-TAA program. NRA funds are not available to cover the costs of supplemental (i.e., beyond 52 weeks) needs-related payments made at the discretion of the State/substate area.

8. Outreach to Secondary Firms and Potential Secondarily-Affected

Workers. The following guidelines and suggested actions should be used to ensure that secondary firms and potential secondarily-affected workers are aware of the benefits available to them:

- < Outreach is an important effort in making sure employers and potentially eligible workers are aware of the specialized assistance available to secondarily-affected workers. Therefore, the State NAFTA-TAA and DWU staff are encouraged to implement such efforts through Rapid Response activities. The Department is developing plans for additional action in this area and will be consulting with partners on this subject.
- < Outreach efforts should include the following: (1) making NAFTA-TAA petition forms readily available to secondary firms and potential secondarily-affected workers at all local service delivery area offices and local UI and Employment Security/Job Service offices; (2) ensuring a timely exchange of

information between the State NAFTA-TAA Coordinator and the State DWU when a petition is received and once a final determination is issued; and (3) ensuring that the DWU takes appropriate actions to contact the affected worker group(s) and that any assistance for which they are eligible is initiated.

- < Once OTAA issues a final finding, a notification will be transmitted to the appropriate State DWU. The DWU will be responsible for determining if the workers covered by an affirmative finding are already receiving assistance and, if not, for implementing additional outreach activities to contact the workers to make them aware of the available assistance. The DWU may contact the worker through Rapid Response, WPRS contacts, mail, or newspaper articles.

9. Action Required.

- a. States are required to implement the provisions of the Statement of Administrative Action pursuant to the guidance set forth in this document. States should inform all appropriate State and local staff of these procedures and ensure that staff have the necessary resources available to comply with this directive.
- b. State NAFTA-TAA program staff must review the information contained in this directive and ensure that appropriate arrangements are made with the State DWU, and allocate staff resources to implement these procedures.
- c. State staff should coordinate with the State UI program to ensure that secondarily-affected workers receive income support (needs-related payments) at the applicable level of UI weekly benefit amounts.

10. Inquiries. Questions on the investigative process to determine if a worker group qualifies as secondarily-affected workers may be directed to: Grant D. Beale at (202) 219-4820 ext. 101. Questions on JTPA policy and the application procedures for JTPA Title III NRA grants may be directed to: Douglas Holl at (202) 219-5577 ext. 115.

11. Attachments.

- A. Guidelines for the Investigative Process to Determine Qualification as a
Secondarily-Affected Worker Group.
- B. NAFTA-TAA Petition Form (ETA-9042).
- C. Procedures for Applying for JTPA Title III National Reserve Account Grants
to Assist Secondarily-Affected Workers.