**WorkforceGPS**

**Transcript of Webinar**

**Subpart E: Trade Adjustment Assistance (TAA) Final Rule**

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GRACE MCCALL: And welcome to "Subpart E, Re-Employment TAA – RTAA." So without further ado, I'd like to turn things over to one of our speakers for today, Julie Baker, supervisor OTAA/ETA. Take it away, Julie.

JULIE BAKER: Thank you, Grace. Good morning and good afternoon, everyone. Just to reiterate what Grace has said, please note that the speaker notes are in today's PowerPoint presentation, which you can download in the file share window. You can download and follow along with the speakers' notes or you can refer to them for questions and answers that we will be getting to later in the presentation.

Also during the presentation, please enter your questions into the chat. We will try to take some time and answer those throughout the presentation. Or we might just respond back to you via the chat window.

And lastly, you might want to consider having a copy of the Final Rule open so you can follow along.

And with that, I'm Julie Baker. I am supervisor with the Office of Trade Adjustment Assistance, Employment and Training Administration. My co-presenter is Tim Theberge. Tim, say hi.

TIM THEBERGE: Hi. Good afternoon or good morning, depending on where you are.

MS. BAKER: Thank you. And today's objectives are covering major updates, key definitions, initial eligibility, and continuing eligibility.

Subpart E governs re-employment trade adjustment assistance, or RTAA. The 2009 program established the RTAA program to replace the demonstration project known as Alternative Trade Adjustment Assistance, or ATAA. That ATAA was established by the 2002 program.

This subpart E prescribes regulations implementing provisions in Section 246 of the act and incorporates administrative guidance. There were no previous regulations covering the RTAA program, so this is all new to us in writing and regulations. It's not new to us in administering RTAA.

OK. Highlights and major updates. Oops. Sorry. OK. RTAA provides wage supplements to eligible adversely-affected workers. And throughout the presentation we're going to use the shorthand AAWs, adversely-affected workers.

The wage supplements are to eligible adversely-affected workers who are age 50 and older, and who return to work earning less than their adversely affected employment and $50,000 or less per year. AAWs receiving RTAA may also be eligible to receive employment and case management services, job search and relocation allowances, and TAA-approved training.

And if the HCTC – or health coverage tax credit – benefit is available, eligible RTAA recipients may apply for or claim the HCTC.

More on highlights and major updates. This is the first codification of rules for RTAA. It establishes criteria for determining whether re-employment is at the same firm from which the worker was separated. It will explicitly establish that an application for UI is not required for RTAA purposes. It also requires re-employment to be legal under federal, state, and local laws. It will provide regulations on continuing eligibility. And re-employment must be covered employment for UI purposes.

Section 618.500 provides the scope of this Subpart E and addresses the governance of RTAA. RTAA is authorized under Section 246 of the act, and it provides 50 percent of the difference between the wages received by the AAW at the time of separation from adversely-affected employment and the wages received by the worker from re-employment for workers age 50 and older who meet the eligibility criteria described in this Subpart E.

The department currently calls this "wage supplements;" but know that it has also been called "wage insurance" or "wage subsidies."

An AAW may combine wage supplements with other benefits and services, including employment and case management services, TAA-approved training, job search and relocation allowances, and, if available, the HCTC.

Initial eligibility. This is Section 618.505. 618.505(a) covers that AAWs must be at least 50 years of age. They may obtain re-employment prior to turning 50. They earn not more than $50,000 in re-employment wages; earn less than the wages at separation; be employed full-time or employed at least 20 hours per week and enrolled in TAA approved training; and cannot be employed at the firm from which they were separated.

Section 618.505, Individual Eligibility, enumerates the eligibility criteria for RTAA. This paragraph (a) outlines the general age, wage, and re-employment requirements to be eligible for RTAA. None of these are new. Many commenters asked the department to raise the earnings limit, but the limit on earnings and total amount of benefits for RTAA recipients is set by statute and the department does not have the authority to change these.

We have a question. And FYI, if you want to see the answer, that is when you can download today's PowerPoint from the file share window and the answer is provided in the speaker notes.

So the question is, there is a statement contained in 20 CFR 618.505(a)(4) that it is either full-time employment or a combination of employment and training that provides eligibility. Can you clarify this?

So the answer is that Section 618.505 reads, in Paragraph (a)(4)(i): "Is employed on a full-time basis as defined by the law of the state in which the worker is employed and is not enrolled in any training program approved under Subpart F of this part; or (ii) is employed at least 20 hours per week and is enrolled in a TAA-approved training program."

So the answer to this is that the regulatory text at Section 618.505(a)(4)(i) does not exclude adversely-affected workers who are employed full-time and also enrolled in training. It is intended only to make clear that workers employed full-time that otherwise meet the RTAA requirements need not be in training to receive the benefit. And conversely, adversely-affected workers who are working only part-time must be enrolled in a TAA-approved training program in order to be eligible to receive the benefit.

Over to you, Tim.

MR. THEBERGE: All right. Thanks, Julie. So Section 618.505 paragraph (b) explains some terms that are specifically for the purposes of RTAA. There's four that we're going to cover. One is firm; the next is successor-in-interest; then full-time employment; and lastly, year. Again, we're going to discuss how each of these pertains to RTAA specifically.

The first of these is firm. As explained in more detail in Part A – which you can catch the recording of on our TAA.workforcegps.org community site – the definition of "firm" revises the term from 29 CFR 90.2. Of note, the definition of "firm" incorporates the definition set forth at Section 247(3) of the act.

Pursuant to the act, the term "firm" means "a firm, including an agricultural firm or service sector firm; or an appropriate subdivision thereof." Therefore, the term "firm" in the RTAA context means "the firm or appropriate subdivision." This definition of "firm" is used by the department to identify the firm in the certification.

To determine that an AAW is eligible for RTAA, the state must make a finding that the new employment obtained by the worker is not at the firm from which the worker was separated, and that forms the basis for the worker's applicable certification. A state must determine what constitutes the firm for purposes of determining RTAA eligibility on a case-by-case basis, depending on the certification.

If the department issues the certification in an appropriate subdivision of a firm, an AAW in that group is not eligible for RTAA upon return to employment with that subdivision, but may be eligible for RTAA upon return to employment at another subdivision of the firm.

If, however, the department issues the certification for a worker group composed of all workers from the firm rather than from a subdivision, then the worker is not eligible for RTAA based on a return to employment in any subdivision of that firm. A certification may cover more than one subdivision of a firm or be located in one of several states.

Paragraph (b)(2) explains that the term "firm" includes predecessors and successors-in-interest, affiliated firms, and continuity of operations at the same location. So the state must determine if the firm now employing the AAW is the same firm as the one from which the AAW was separated. So we're going to go into a little bit more detail on that because there are some factors that need to look at in order to determine whether or not there's a successor-in-interest.

So here that is. So the regulation establishes several criteria in descending order that the state should apply to determine whether one firm is a successor-in-interest to another, including a list of conditions the state may need to consider when rendering a determination.

The intent of this provision is to assist states in determining whether the worker has become employed by a firm that is different from the firm from which the worker was separated.

Paragraph (b)(2)(i) explains that in making its determination, the state should first review the certification under which the worker was covered, look for any amendments to that certification, and compare the name and address of the firm in the certification to the name and address of the firm in which the worker has found re-employment. If they are the same, this is in most cases dispositive; the firms are the same and the worker will not be eligible for RTAA.

Paragraph (b)(2)(ii) explains that if, despite reviewing the information gathered under reviewing the certification, any amendments, and the name and addresses, it nonetheless remains unclear whether the firms are the same, the state may need to obtain further information about the firm re-employing the worker, from the employer and otherwise, to make that determination.

The State should determine whether the firm at which the worker found re-employment is a successor-in-interest to the firm from which the worker was separated. If the re-employing firm merged with, acquired, or purchased the assets from the firm from which the worker was separated, then the re-employing firm is a successor-in-interest.

So this gets to one of the questions we were asked about whether or not a successor-in-interest employer make the AAW ineligible for RTAA. The short answer to that question is yes, because that would be the same firm.

Paragraph (b)(2)(iii), if the reemploying firm does not meet the criteria in (b)(2)(i) or (ii) of this section, or if that information is unavailable, the state should consider the factors identified in this slide – these are listed in (b)(3)(i) through (vii) – to determine whether the re-employing firm is a successor-in-interest.

If the state determines that the worker returned to employment with a successor-in-interest to the firm from which the worker was separated, the worker is not eligible for RTAA. The state must make the determination based on the individual application of the worker. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially owned by substantially the same persons, is considered a single firm.

If the state determines that the re-employment is with a successor-in-interest, the state must also seek to identify any additional members of the worker group and notify them of their potential eligibility under the TAA program. And that's covered in Subpart H Section 618.816(e).

All right. Next, full-time employment. Paragraph (c) explains that, for purposes of RTAA, full-time employment is defined by the law applicable to the state in which the re-employment occurs. The department defines state law in Subpart A Section 618.110 as state UI law.

Following longstanding practice, state UI law means state statutory provisions and their implementing regulations. In the absence of a state statutory provision and regulation, state law may be determined via state court decisions or program letters, manuals, or other state documents that interpret state UI law. So even if a state did not define full-time employment in the state code, a definition contained in another state-issued document would apply.

Paragraph (c)(1) explains that if state law does not contain a definition of full-time employment, the state is required to define full-time employment for RTAA purposes. The department advises if there is no definition of full-time employment in applicable state law, use of adjudicatory decisions or similar determinations is appropriate. The state also is permitted, under Subpart H, to establish a definition for the TAA program purposes.

So again, I want to make clear that you're using the state law – the definition of full-time employment – for the state in which the worker has found re-employment. So if your worker lives in northern Massachusetts in the northeast corner and was dislocated from a firm there and becomes re-employed in southern New Hampshire, the definition of full-time employment in play would actually be the one for the state of New Hampshire, even if Massachusetts is a liable state. You're looking at the state in which they are employed.

So one of the other definitions we have to contend with in RTAA is what is a year? We've added this definition to 618.505(b)(4). This is for RTAA purposes only. A year represents the 12-month period beginning with the first full week of qualifying re-employment. We have added this to resolve the issues with earnings projections that come into play for RTAA eligibility and continued eligibility in 618.515(a)(3).

All right. Any questions I need to take?

MS. BAKER: Great. Thanks. All right. Moving on to qualifying re-employment, Section 20 CFR 618.505(d). This provides that eligibility for UI is not needed for RTAA purposes. Eligibility for RTAA is not dependent on eligibility for UI.

In paragraph (e) of this Section 618.505, Eligible Employment, it explains the types of employment that are considered qualifying re-employment for RTAA.

Paragraph (e)(1) establishes that qualifying re-employment under RTAA is the same as covered employment for UI purposes. This provides uniformity in administration. This paragraph requires that the employment be legal under federal, state, and local laws.

Paragraph (e)(2) explicitly allows a state to consider employment that provides wages plus commission, and piecework-based employment to be re-employment when determining RTAA eligibility. The department authorized these specific types of employment to ensure that states are not limiting re-employment opportunities.

Paragraph (e)(3) provides that qualifying re-employment may include multiple jobs.

Paragraph (e)(4) provides that the state must count hours in which an RTAA-eligible worker is on employer-authorized leave as hours of work for purposes of meeting the full- or part-time employment definitions of this section, provided that doing so is consistent with state law.

And just a note. The phrase "covered employment," in short, is work that is covered by UI benefits when a worker becomes unemployed.

So I had a couple of questions come in through the participant chat. The first was, "Can an adversely-affected worker hold two part-time jobs to meet full-time requirements?" Yes, and that is something that is covered in this section.

We also had a question that asked, "You indicate that re-employment must be covered employment for UI purposes. Does that mean self-employment –" I'm sorry. "Does that mean self-employment is no longer allowed?" We are going to get to self-employment later in this presentation. And that is – yes, so we're going to talk about that later on, so I'm going to hold all the questions about self-employment until I get to that section.

All right. Let me move forward here. Eligibility period. Section 618.510, Eligibility Period for Payments of Re-employment Trade Adjustment Assistance and Application Deadline. This section sets forth the eligibility period for payments of RTAA. Paragraphs (a) and (b) of this section explain the differences in eligibility periods for AAWs that have not received TRA and for those that have received TRA, respectively.

So paragraph (a) provides that for an AAW who has not received TRA, the worker may receive RTAA benefits for a period not to exceed 104 weeks – or two years – beginning on the earlier of the date on which the worker exhausts all rights to UI based on the separation of the worker from the adversely-affected employment that is the basis of the certification; or the date on which the worker first begins qualifying re-employment.

Paragraph (b) provides that for a worker who has received TRA under a certification, the worker may also receive RTAA benefits for a period of up to 104 weeks – two years – beginning on the date on which the worker first begins qualifying re-employment, reduced by the total number of weeks for which the worker received TRA.

Some key dates. Paragraph (c) describes that the state will need to know certain applicable dates before making an RTAA determination.

To make the RTAA determination, the state will need to know the applicable dates for the adversely-affected worker – the date of reemployment; and either the date the worker exhausted all rights to UI or the dates the worker began and ended receipt of TRA before the date of re- employment. And all these dates must occur within the 104-week eligibility period identified in the act.

Paragraph (d) of this section establishes an exception to the general rule that all events to – I'm sorry. Paragraph (d) establishes an exception to the general rule that all events to establish RTAA eligibility occur when the individual turns 50 years old. Paragraph (d) provides that the AAW may obtain re-employment before the age of 50, which later may be deemed as RTAA-qualifying re-employment when the AAW turns 50.

It is at this time – after turning 50 – that the AAW may be potentially RTAA-eligible, if all other eligibility requirements are met. This is because, upon obtaining the re-employment, which is a date certain, the state can establish the RTAA eligibility period – 104 weeks – and when the AAW turns 50, they may be eligible during the remaining RTAA eligibility period.

The AAW potentially is eligible if the eligibility period is established sometime after turning 48 and consequently such period expires after turning 50. If the RTAA eligibility period has expired by the time the AAW turns 50, then they are not be eligible for RTAA. This would foreclose the opportunity for an AAW whose RTAA-eligibility period is established before turning 48 and consequently expires before turning 50.

Furthermore, if the AAW obtains employment before age 48, and is not eligible for RTAA at 50, because the 104-week eligibility has expired, the worker cannot obtain other employment to establish RTAA eligibility based on an eligibility period established with subsequent employment after turning 48 and thereafter.

So that's a lot of legalese that basically says, if you have someone who is close to turning 50 and they obtain re-employment before they turned 50, if they have RTAA eligibility once they turn 50, then they can use that to obtain RTAA. But if they turn 50 after their expiration period for – their eligibility period for RTAA, then they're out of luck. OK?

Moving on here to paragraph (e). This allows for exceptions to the eligibility periods set forth in paragraph (a) and (b) – which I just talked about – as well as to the filing deadline in instances of judicial appeals, where the department later grants a certification of the worker group covered by that petition and the ITC has not indicated that a delay in the certification was attributed to either the petitioner or the adversely-affected worker. And you can see those conditions on the screen.

Paragraph (f), in the event the filing deadline and eligibility periods do not apply because the certification meets the conditions in paragraph (e) of this section, the filing deadline and eligibility periods for RTAA will be extended by the state for the period necessary to make RTAA reasonably available to adversely-affected workers.

OK. Before I turn it back over to Tim, I just wanted to check to see if we've got some questions in the chat. OK. It looks like there's one that is the date of re-employment. "Is this first re-employment after separation, even if not RTAA-eligible? Example, began re-employment at a part-time status then became full-time at a later time or obtained employment at over $50,000 and lost that position and took a new position that was less than $50,000."

It looks like there's a lot of different things going on in this scenario. It's kind of like throwing everything at this question. I think we should just maybe hold this until the end because we have a lot to go through before we can really fully answer this. All right. I'm going to hold that one till the end.

MR. THEBERGE: Perfect. Yep. And so there's a few others.

MS. BAKER: And I think that's it. So over to you.

MR. THEBERGE: I do. Thanks, Julie. And there's a few others that ask some questions on wages and calculations and what's included in that and what's not. And so we're going to go through those because we think some of those questions might get answered for you.

So I'm going to move on to 618.515. This is continuing eligibility and the timing of payments. This explains the requirements for an AAW's continued eligibility under RTAA and the timing of payments of that benefit.

So paragraph (a)(1) of 515 allows workers to change jobs without loss of access to RTAA, so long as the worker continues to meet other eligibility criteria.

(Paragraph) (a)(2) prohibits the payment of RTAA during a period of unemployment and provides that an adversely-affected worker may resume receipt of RTAA payments upon obtaining qualifying re-employment for the remaining portion of the eligibility period. Section 246(a)(7) of the act prohibits payment of TRA and RTAA for the same week.

Paragraph (a)(3) establishes a requirement that if the computed annualized re-employment wages exceed $50,000, no additional RTAA payments may be made unless conditions change again, resulting in a recomputed annualized re-employment wages of $50,000 or less. This provision is established to reduce the likelihood and number of overpayments that would otherwise occur.

Adversely-affected workers remain otherwise eligible for RTAA until they actually earn, or are projected to earn, $50,000 in a year, as now defined in Section 618.505(b)(4) for purposes of RTAA. There's some additional clarity in 515(a)(3) and (d)(1).

Paragraph (a)(4), if the worker is employed part-time – at least 20 hours per week – and receiving RTAA while in TAA-approved training, the state must verify participation in training on a monthly basis. Verification of participation in TAA-approved training will be conducted in accordance with state policies. States may use training benchmarks, described at 618.660, as a method of verification of participation in training.

Paragraph (b) addresses the timing of RTAA payments, continues the longstanding practice of allowing states to pay RTAA on a weekly, biweekly, or monthly basis, for not more than a 104-week period – that's two years – under any one certification, beginning no earlier than the date of qualifying re-employment under 618.505. The regulatory text also allows for retroactive payments, including a lump sum payment, for which an adversely-affected worker may have been eligible but who may not have known such benefit was available at the time.

Paragraph 618.515(c) requires the state to verify, on at least a monthly basis, that the adversely-affected worker continues to meet the eligibility requirements for RTAA. The regulatory text requires the state to determine whether any changes have occurred to the worker's re-employment wages. It also requires the state to determine whether any changes have occurred to the participant's annualized re-employment wages. This is established to reduce the likelihood and number of overpayments that would otherwise occur.

A question.

Monthly verification for RTAA could be administratively burdensome, so can states shift to a quarterly cycle?

The department clarifies that current practice is that RTAA must be paid on no less than monthly. Monthly verification reduces the possibility of overpayments. So no, weekly, biweekly or monthly; you cannot do quarterly cycles for verification or payments.

Change in wages. So there have been a couple of questions with regard to changes and – changes in wages and wages in general, so we're going to go through that now.

This is 618.515 paragraph (d). It establishes procedures for states to recompute the appropriate RTAA payment based on a change in annualized re-employment wages. Two provisions were added to reduce the likelihood and number of overpayments that would otherwise occur.

So what I want to do is give you a moment to look over this slide relative to exceeding or projecting to exceed $50,000 during a year; and/or the second one would be if they change but do not exceed $50,000 in a year during the eligibility period.

So paragraph (d)(1) requires states to cease additional payments and issue a determination to a participant if the annualized re-employment wages exceed $50,000, or if the annualized re-employment wages equal or exceed the annualized separation wages. Remember, under RTAA, to be eligible, you have to earn less than you did in your adversely-affected employment.

Paragraph (d)(2) requires states to adjust the RTAA payment if the annualized re-employment wages change but do not exceed $50,000 or the annualized separation wages.

All right. So now we're going to move into the benefits available and the payment calculations. This is 618.520. And what we're doing here is detailing the benefits that are available under RTAA that are described in Section 246 of the act. This includes the wage supplements – RTAA – training, job search and relocation allowances, and, if available, the Health Coverage Tax Credit. Employment and case management services are also available and should be provided to RTAA participants.

So paragraph (a) explains that eligible AAWs may receive a total RTAA payment of up to $10,000 over a period of not more than 104 weeks. Paragraph (a)(1) provides that the total amount of RTAA benefit available to an eligible adversely-affected worker is an amount equal to the annualized wage differential as computed under paragraph (a)(2) or (3) of this section.

Paragraph (a)(2) provides that for initial eligibility, the computation of the annualized wage differential for an AAW employed full-time. Paragraph (a)(3) provides the computation for initial eligibility for an AAW employed at least 20 hours per week and enrolled in TAA-approved training.

The annualized wage differential in either case is a percentage of the difference between the wages received by the AAW at the time of separation and the wages received by the AAW from re-employment. RTAA benefits are not available if the worker's annualized wages do not exceed the worker's re-employment wages.

So if they exceed – if their wages at separation do not exceed their re-employment wage, then there's no benefit available to them.

Paragraph (a)(2) provides that for an eligible adversely-affected worker employed full-time, the annualized wage differential is an amount equal to half – 50 percent – of the result of the worker's annualized wages at separation minus the worker's annualized wages from re-employment.

Paragraphs (a)(2)(i) and (ii) provide the computation for annualized wages at separation and annualized wages at re-employment, respectively. A state would compute annualized wages at separation by multiplying the worker's hourly rate during the last full week of the adversely-affected worker's regular schedule in adversely-affected employment. Right? You're then going to take that by the number of hours the AAW worked during the last full week of such employment, and then multiply that by 52.

Paragraph (a)(2)(ii) computes the annualized wages from re-employment. The same criteria for work hours and compensation are used for annualized wages at separation, in order to ensure a fair and logical comparison. We compute the annualized wages by multiplying the worker's hourly rate during the first full week of re-employment by the number of hours the worker worked during the first full week of such re-employment, multiplied by 52.

Paragraph (a)(3) governs the computation of the annualized wage differential for initial eligibility of a worker working at least 20 hours per week and enrolled in TAA-approved training. (Paragraph) (a)(3) provides that, as part of the RTAA benefit amount computation for an AAW re-employed part-time, the amount of annualized wages from re-employment is multiplied by the ratio of the worker's number of weekly hours of re-employment to the adversely-affected worker's number of weekly hours at the time of separation.

Other benefits. Paragraph (b) incorporates the provisions of the act at 246(a)(2)(C), allowing RTAA recipients to receive training and other services, including employment and case management services. The department addresses these services in Subparts F for training, Subpart C for employment and case management.

Paragraph (c) explains that RTAA recipients are otherwise eligible for job search and relocation allowances and those are handled in Subpart D.

Paragraph (d) incorporates 246(a)(2)(B) of the act, which permits eligible RTAA recipients to apply for HCTC – the Health Coverage Tax Credit – if it is available, to assist in paying their health coverage premiums.

RTAA and TRA. This is covered in 520(e). Paragraph (e) establishes the restriction that once an adversely-affected worker has received a payment under RTAA, they are no longer eligible to receive TRA. Section 246(a)(4)(B) provides that an adversely-affected worker may receive RTAA after receipt of TRA. It also provides that a state must reduce RTAA payments as a result of receipt of TRA.

The act does not provide that recipients of RTAA may receive TRA at a later date. In order to limit the administrative complexity of allowing eligible AAWs to move back and forth between RTAA and TRA, this Final Rule prohibits receipt of TRA after RTAA. This has been the operating policy of the department since the 2002 program and it is not new.

A question. Does RTAA require a full week of re-employment or may states prorate partial weeks?

The comparison of wages for RTAA eligibility must be from the last actual full week of employment prior to separation and a full week of qualifying re-employment, whether actual or projected. This allows for the fairest comparison of the wages.

Another question. Are commissions included in the annualized wage calculations?

For purposes of RTAA, commissions are included in this calculation, as well as overtime, bonuses, et cetera. The statute does not allow for the exclusion of overtime.

Another question. Why didn't the department raise the maximum RTAA compensation in order to reflect better the economic climate?

We answered this already; we'll say it again. The income limits and the benefit amounts – so the $50,000 earnings limit and the $10,000 benefit amount – are established by Section 246 of the act. The department does not have the authority to adjust these limits; that would take an act of Congress.

Another question. Should states instruct adversely-affected workers on their waiver of TRA benefits and the maximum value of RTAA benefits they may receive?

So the department concurs that this is a good practice, but has concluded it is unnecessary to regulate this activity. The statute does not explicitly require a notice of this type, since the AAW is not actually waiving TRA benefits. Rather, by receiving RTAA benefits, he or she is losing access to the TRA benefit. So the department has concluded that the decision on whether to provide this type of notice is left to the individual states. We are not regulating that you do so.

MS. BAKER: OK. I think we're just going to go ahead and move on and that leaves us a little bit more time for questions at the end.

So this next section is determinations. Section 618.525, actually determinations, redeterminations, and appeals. This section explains the requirements related to redeterminations, determinations, and appeals under RTAA. Sorry, that was a little redundant there.

All right. So paragraph (a) of this section – this is going to be a section that you may want to follow along. In which case, I'm going to go through a bunch of paragraphs.

So paragraph (a) provides that specified provisions in Subpart H concerning determinations, redeterminations, notice, and appeals and hearings, apply to RTAA. Paragraphs (a)(1) through (3) provide further procedural requirements specific to RTAA. Specifically, paragraph (a)(1) provides that in reviewing the application, the state must verify and document the AAW's age, re-employment, and wages in determining whether the worker meets the individual eligibility criteria that we talked about in 618.505(a).

Paragraph (a)(2) provides that a determination of eligibility issued to an AAW must include a notice that the state will recompute regularly the benefit amount and may change it if the eligible AAW's wages in re-employment vary. RTAA payments frequently change; therefore, this requirement would prevent confusion as AAWs see their benefit amounts change.

Paragraph (a)(3) allows an AAW to file a new application each time the AAW is re-employed, and obtain RTAA if the AAW meets the criteria of Section 618.505(a) at the time of filing the new application, even if the state has denied a prior application.

The department removed the word "first" from Section 618.525(a)(3) and replaced it with the word "non-qualifying" to clarify that an AAW who is denied eligibility based on non-qualifying employment may file a new application for a subsequent re-employment. Any denial of RTAA benefits is subject to appeal subject to the provisions in Subpart H, section 618.828.

Paragraph (a)(4) provides that a state may approve an RTAA payment and pay it retroactively to an AAW who is covered by a TAA certification but who becomes re-employed before the department issues the certification, provided the AAW otherwise meets eligibility requirements of Section 618.505(a). This is also explained in the discussion of 618.505. Just make sure you look at the preamble.

So we did have some questions on that, so I'm just going to repeat that again. This paragraph (a)(4) provides a state may approve an RTAA payment and pay it retroactively to the adversely-affected worker who is covered by the TAA certification but who becomes re-employed before the department issues the certification. So this is a look-back thing.

Paragraph (b) provides that the recordkeeping and disclosure of information requirements in Subpart H, in Section 618.852 apply to the state's administration of RTAA. The language in that section Subpart H already states that it applies to the administration of the act, which includes RTAA. However, this Section 618.525(b) ensures that there is no confusion concerning the applicability of that Subpart H to RTAA.

OK. Yeah, I'm just going to finish this and then we'll go back and answer some questions.

Reductions of payments and priority of payment, actually 618.530 – Reduction of Re-employment Trade Adjustment Assistance Payments and Priority of Payments – explains the requirements related to the reduction of payments and the priority of payments under RTAA. I'm getting really redundant with these speaker notes, everybody. (Chuckles.)

All right. So paragraph (a) of this section explains when a state can deduct court-ordered child support payments from RTAA payments. A state must treat RTAA payments in the same manner as TRA. State laws regarding deductions of payments from UI and TRA must follow the Social Security Act.

Social Security Act Section 303(e)(1) defines "child support obligations" as "only including obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act, which has been approved by the secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

Social Security Act therefore does not permit deductions for alimony or for child support in general, but only for child support obligations of the type specified. Unemployment Insurance Program Letter – or UIPL – number 45-89 explained in detail the deductions permitted under the Social Security Act Section 303(e)(2).

Paragraph (b) of this section provides that RTAA does not fit into the priority of payments under UI because this benefit is related to employment, not unemployment.

All right. I think we're about ready to wrap up, which means I'm sure we have a ton of questions. So Tim, I'm going to turn it over to you if you've got questions to cue up.

MR. THEBERGE: Yep. We do. We have a couple. They go back to the discussion of self-employment. So there are two.

It says, "You indicate that re-employment must be covered employment for UI purposes. Does this mean self-employment is no longer allowed?" And related to that is, "Is self-employment still an option?"

So this is going to vary by state. So in a state where self-employment may meet a new revised definition of covered employment, then yes, self-employment would be eligible under RTAA. But that's going to vary state-by-state according to applicable state law in that state. I know that there are states working on attempting to cover various gig workers and others that are self-employed, so we do have that answer for you there.

OK. Next, I think we answered this one. It had to do with wages plus commission. There was also a related question on overtime. So yes, we are covering – both of that are included in the calculation. The statute does not provide for us to exclude any of those types of wages from those calculations, so they are not.

So if there are payments of commissions or payments of overtime, both – whether that's from the separated employment or the new employment, those are included in those calculations.

We have one other question that we're going to give Humberto (ph) a minute to review. He was disconnected and just got back in. Julie? Ok.

MS. BAKER: I think I can take the – so we had a couple of questions that came in about retroactivity and how does that all work if somebody had a job before applying for RTAA? So really the easiest way I would explain this is starting with the certification period. OK?

Once you have a petition that has been certified, there's a couple of ranges of things. I mean, the first is the impact date. The certification covers people who have been laid off from this period of time, which is usually a year prior, to the point in which the petition determination has been issued and then two years after that date. That whole period of time is the certification period.

So if you have somebody who meets the criteria – meaning all other eligibility criteria have been met – and they are 50 and they have gotten qualifying re-employment, and all that has taken place before they were actually – the certification was actually issued; and then at the time the petition is certified and the participant comes in and they tell you all of this and they show you the documentation, you can, yes, go back and retroactively pay RTAA for that period of time under that re-employment.

I think – I'm sorry, just looking through the question again. I will just add a caveat as well that sometimes we have dates that change around. Maybe it was a denial of a petition and then later that was – later upon appeal, that was certified.

When you have questions that are about a specific participant and do they qualify and the timelines and so on, please be sure to send those specific scenarios to your regional coordinator and they can bounce it up to us if they need help in answering that question.

All right. I think I handled those. Oh, the only other thing I want to say is that I think the question we got was the same thing I just answered only with the additional wrinkle of what if they have more than one job?

And I would just take it step by step. I would look at were they separated within the certification period? Were they re-employed within the certification period? Were they – did they have – when was their eligibility? And I would just take it point by point.

And also, this is kind of a big scenario if somebody has multiple jobs, so this is one of those that I would heartily recommend that if you have a specific example of this – if you have a specific scenario – just contact your regional coordinator and they can help you walk through it point by point. OK?

All right. I think we have another question, Humberto, if you've caught up on that. (Pause.) OK.

MR. THEBERGE: So we have one on retroactive payments that I believe we actually covered in the preamble. So I would encourage you to look at that. I believe we did cover that specific question.

MS. BAKER: Right. "How far back for retroactive payments? All the way to the start of the new qualifying re-employment, or back to the certification date?" So it's kind of the same thing. So it would go to the start of their qualifying re-employment, so long as it fits within the certification period.

You're only – we're paying the difference in wages. So you're not just giving them money without them having a job. So you have to look at what – when they were paid, when they were working, and then this wage supplement would support that. So, so long as their re-employment occurs within the certification period, even if it's before they actually get notified that the petition was certified, you can retroactively go back and pay that. I think that answers that question.

OK. We've got a big wages question.

MR. THEBERGE: Yeah. The reference for you to look at for the retroactivity question is 618.515(b) covers that specifically.

MS. BAKER: OK. (Pause.) Sorry. Pardon the pause. We do have a little bit of time and so we're just reading the incoming participant questions.

Tim, do you want to take question 22 or do you want me to move on? And question 22 only we can see.

MR. THEBERGE: Sorry. Right. So the question has to do with the date of UI exhaustion based on the qualifying separation. Does this include any UI extensions? So to get to this answer, you have to look at the definition of UI, which is in 618.110. That does look at that and explains that yes, unemployment insurance includes regular UI, extended UI, and additional UI. It's all in there. So that date would move based on UI extensions.

MS. BAKER: Right. You know, another question that comes up a lot – but I don't think anyone has asked this – is directly related to what you just said, Tim, which is that what if they didn't get UI? What does UI exhaustion mean?

UI exhaustion essentially means that it could include them not being eligible for UI. I mean, I guess what I would say is that you have to exhaust all UI scenarios, is probably the easiest way I would say that. And probably everyone who works in UI is – wants to slap me now for saying that. But that's kind of the easiest way that I can go about it, is that all of UI has been exhausted.

So whether they were eligible for it in the first place – and if they were, then have they exhausted all of their UI payments? And then once that's done, we can look at that date.

All right. Humberto, I'm just going to do a little sound check. Humberto, are you on? And do you want me to ask you – read out a question or can you see it? (Pause.) You might be on mute. OK.

There is a question that came in, "So if they were eligible for RTAA and didn't uptake at the time, we would figure eligibility from that time? This is like taking time away from when someone turns 50 a year into re-employment."

OK. So I guess what I would say here is that you have to keep in mind that there is still – there's a finite eligibility window. Like, the benefit is only available for a finite amount of time. So this is not a case in which – it's not a lifetime benefit. It's a specific kind of – there's an order to how you apply when their eligibility for the benefit begins and ends; and then when they're eligible for a benefit, what is their timeframe? And that kind of depends on a number of factors. Did they receive TRA or did they not receive TRA?

So I think that probably the best thing here – maybe I'm not really understanding the question, is I put together, like, a graph – a little chart – that says – and we can go back to some of our earlier slides. I don't think I'm going to go all the way back to these. But there's a couple of slides that you will find in the presentation that I said if TRA – if they received TRA, then this; if they did not receive TRA, then that.

And I found it helpful even to just jot that down on a little chart and kind of make a little map. So if they did receive TRA, I would look at this, this, and this. If they did not receive TRA, then I would look at this, this, and that.

And then the whole turning 50 aspect to it, it is another little wrinkle. And remember that this is meant to be helpful; it's not meant to be an additional burden to you guys. It's meant to be helpful because we do have – because you have 104 weeks and that's a long period of time. So what happens if somebody is 49 and they turn 50 within that period? Then when they turn 50 there might still be some time in which they would be eligible. But there's a constant clock that's kind of running as well. So I hope that helps.

MR. THEBERGE: Well, and I want to make clear that if the person shows up when they're six months into the employment and says, oh, my co-worker – my former co-worker just told me about this program, they might have been eligible prior to that. That's where the retroactivity comes into play and the state can look back at when they began that qualifying re-employment and, if they were otherwise eligible, issue them a retroactive payment.

All right. So we have another question. Last full week.

MS. BAKER: It's long. I can – do you want me to read it to you, Tim?

MR. THEBERGE: No, no. I just lost it – I lost it because it moved. So it says, "When calculating annualized wages for RTAA, the guidance is to compute annualized wages at the separation by multiplying the worker's hourly rate during the last full week of the worker's regular schedule in adversely-affected employment by the number of hours they worked during the last full week of such employment, multiplied by 52. If we are no longer excluding overtime in the calculations, it is highly unlikely that worker's final paystubs would have overtime hours. Can the worker's previous wages and overtime be taken into consideration when calculating –" so again, no.

The regulation is pretty clear on which week you are to use and how you're to calculate it and what goes into that. There is no statutory authorization for us to exclude overtime or other wages, so we're unable to do so. So that will be – may be unfortunate for some workers, but that is the fairest way to implement that that is compliant with the statute.

MS. BAKER: OK. (Pause.)

MR. THEBERGE: What do we have here?

MS. BAKER: We do have a – yeah, we have a couple that have come in. And I'm just –

MR. THEBERGE: Yes. So 26 says, "I want to make sure I'm understanding this correctly. If an AAW gets re-employed at age 49, their 104 weeks of RTAA eligibility starts when the re-employment occurs. The AAW has a reduced number of weeks that they are eligible to receive RTAA?" Yes, I believe we talked about that. We had a slide that specifically discussed that with – relative to 48-year-old I believe was the example we gave. But yes.

MS. BAKER: Right. OK. So I am just kind of pulling these slides up, 21, 22, 23, 24. You will need – and I highly recommend you download today's PowerPoint in the file share window and you'll see our speaker notes in there. This is like the chart that I told you guys about. No TRA, with TRA.

And then in this slide we talked about the key dates, the need to know. That's when we talk about – oops, I'm sorry. I'm on the wrong page on my printout. OK. That's when I talk about these dates all must occur within the 104-week eligibility period identified in the act.

So I am going to make you all do a little bit of homework here because you really need to look at those dates. One of the, essentially, loopholes that we closed was language – we wanted to make sure that the language was tightened up to make it clear that there is an overall 104-week eligibility period. Period.

So that if – there's no ongoing lifetime benefit for RTAA that doesn't just kind of float around. That all of this does start; you have a window of the worker has to have been separated within the certification period.

So when – if the certification period has expired – if the certification has expired and the worker hasn't been laid off within that period, then they wouldn't be eligible for RTAA at all. But once they have been separated and they are looking for re-employment, that's when the RTAA benefit can come into play. But it is only – there's only this whole overall 104-week window for that.

I don't know. I probably am not answering that very smoothly. So one of the things I would recommend that you do – and we'll talk about this in just a few minutes as we go through the closeout slides – is that if you have scenarios or you have questions that we're not able to answer, or if we didn't answer it very – if you didn't like how we answered it – I'm not saying that you disagreed with us, but I'm saying if we could have been clearer and you want a more complete answer, please send your question to your regional coordinator or you can send it to regulations.taa@dol.gov and we will get a more complete answer back to you. OK?

Tim, anything else come in that we need to answer?

MR. THEBERGE: We do. It says, "If annualized wages exceed $50,000 annually and that disqualifies the worker, how often are RTAA claims applications supposed to be processed?" I think the question is whether can at some point later the worker come in and re-apply for benefits? The answer is yes. We don't prescribe sort of how often or when that can occur. But yes, if the worker then has a change in wages that they believe makes them eligible, they can come in and re-apply.

MS. BAKER: OK. All right. We have another question and I think we might have – I might have skipped one before. This is a question about, "If a worker has a job before the certification and their eligibility paperwork is done after the job is found, do we backdate to certificate date?"

OK. The certification period that I was telling you about, impact date through to expiration of certification, that is a window. If somebody has been laid off prior to the impact date, they are not covered under that determination, unfortunately. Their separation has to be within that certification period.

And you guys might benefit from going back and taking a look at Subpart B, the petitions and determinations. We talk a lot about what is the certification period in that section. And also the definition section, I believe.

So going back to the question, if a worker has a job before the certification, unless that job is their adversely-affected employment, or if they are laid off within that impact date – after the impact date before the petition has been certified, and they have met all eligibility – I wouldn't backdate anything. You can do a retroactive payment to cover that re-employment, so long as all your ducks are in a row and they've met all the eligibility.

MR. THEBERGE: So there's another one that asked, "Since overtime is included into the calculation of annualized wages, does it also include the number of hours to determine full-time employment?" I don't know that I understand it the way it was asked, but I will refer you to that part of the rule, which is 618.520(a) and then (2) is where you want to look for that.

And it explains the relationship of hours both in the separation wages and the re-employment wages. So you're dividing the earnings in that full week by the hours worked. So if they – again, if it's – whatever the dollar amount is, it's then divided by 32, 40, 45, whatever those hours worked goes into both of those determinations, those calculations.

MS. BAKER: OK. We also had a question come in and – I've got to scroll back up. "If a person has a part-time job before separation from adversely-affected employment, which continues after re-employment, wages from that part-time employer have to be used in calculating the annualized separation wages as well as the annualized re-employment wages?"

OK. I love this. It's like an expert-level question. So I'm going to take a shot at answering this, but chances are the person who asked me this question knows more about this than I do. So if I don't answer this completely or fully, feel free to send this question in to us.

What I'm going to say here is that all we are concerned about in terms of the annualized separation wages are the adversely-affected employment wages. OK? Where this gets a little bit complicated is if they have a separate part-time job, kind of a side hustle is really how I would put that, and they are looking to maybe use that – their, like, side hustle – as their RTAA re-employment, then, I think this is a scenario in which you're going to have to talk – we're going to have to talk this through if this comes up, because I don't know that I've really come across that.

But what I would say is that if there is – if they knew their job was threatened and it's within the certification period, and they are – they haven't yet separated from their adversely-affected employment, but they got a part-time job within that period – you know what I mean? So a petition is filed; it's under determination, it's under investigation; the person knows that they're likely to lose their job and they get a new part-time job. And then they are in fact separated from their adversely-affected employment.

The part-time job they got is just the same as we just – we were talking about earlier. You can use that for their – so long as they meet all the other criteria and that part-time job. You can.

But here's the caveat. If it's part-time, then the person also has to be in training. So this adds a whole other complex layer to it and now we're talking about adversely-affected incumbent worker, in training, and part-time job, and RTAA.

So I would say this is an awesome expert-level question. But I think we have to look at this as a real-life scenario. So if this in fact happens to you all, just remember send the specifics to your regional coordinator and we can pick it up at that point. OK? Thanks.

All right. We have a few minutes left.

MR. THEBERGE: So I'm going to take –

MS. BAKER: I think we're still looking at incoming.

MR. THEBERGE: Yeah. I'm going to take this one. So it says – this one goes back to the eligibility period, "What if the claimant never applied for or drew from UI?" So I know that other parts of the rule talk about the statement "or if they had filed" or "when they had filed," something like that. RTAA, this part of the rule, does not do that.

So you have two dates. One is when they exhaust UI. The second is the date on which the worker first begins their qualifying re-employment. My read of that is that you're going to look at the date of re-employment.

There is an exhaustion of UI clause in the regulations and so you should read that relative to the other provisions. My understanding as of right now is that that only applies to those other parts; that that does not apply – oh, wait, sorry. I take it back.

So yes. So if we looked at 618.110, exhaustion of UI, there are two definitions that you have to look at. One is having received all of the UI to which the worker was entitled or the expiration of the benefit period.

So I think there are two questions that we're looking at that – the answer to both of those is yes. You would be looking at the expiration of that benefit period. That's what you would use as your "or" statement for either the UI claim or re-employment date. You're going to be using the definition of "exhaustion" from 618.110.

MS. BAKER: All right. I think we're at the point where we probably want to move forward into wrapping it up. As I said, if we didn't get to your questions, Tim is going to tell you what to do. So Tim, over to you.

MR. THEBERGE: Right. Great. So there's a couple resources we want to make sure you are all aware of. The fact that you are on this webinar probably means that you found the first one; that is our TAA community on WorkforceGPS. So if you are not already a member, we encourage you to join that and to sign up for our weekly e-lerts.

The second is the official TAA program website. Note that our addresses have recently changed. I believe the old one redirects, but I'm not sure for how long that will do so.

There is also the link here to the Federal Register posting of the Final Rule. I encourage you to utilize that version as it does have the preamble, which is rather important in these discussions because a lot of this stuff is covered in the preamble, where we explain our logic and reasoning behind that and respond to questions that were submitted.

Lastly is the Trade Act of 1974 as amended; that is the current U.S. Code version of the statute. So that's the official that's maintained by the U.S. House of Representatives. There's an unofficial version on our website, but the official version is that one that is linked there.

These are our upcoming and remaining; there are five left for you to attend. Subpart F, which is broken out into two parts, part one and part two; and then G, H, and I. All right?

If you have any questions that we did not get today, or if you have additional questions you would like us to answer, please see – or send them to regulations.taa@dol.gov. We have a team of individuals that have access to that and we are standing by to receive and answer your questions.

MS. BAKER: OK. Awesome. Oh, I'm sorry. Go ahead, Tim. I think you have one more slide for now.

MR. THEBERGE: No, we're good. All set.

MS. BAKER: OK.

MR. THEBERGE: Just the thank you.

MS. BAKER: Yeah. And I wanted to say to everybody – I mean, I wanted to echo my thank you as well. But also, one thing that we are looking to do a little bit later, after we get done with all of our subpart training – subpart-by-subpart training – is we will have some – a whole phase two of training that we are preparing and it's about different topics.

We also want to supplement those with scheduled chats. And I just wanted to make – to tell you guys this now because this RTAA I thought was awesome; I really appreciated all the feedback and all the questions that came in. And I think that RTAA would be a great one to have some scheduled chats in down the road. So I wanted to let you know, thanks to all your good questions we are already thinking about ways we can provide some additional technical assistance and what would suit all of you.

I will be turning this over to Grace in just a moment, but there will be a section in which, if you have ideas or ways that we can give you some more training – if you have ideas specific to the RTAA world, please be sure to add those into that chat window when it comes up.

And with that, have a wonderful Labor Day weekend, everyone. And I will turn this over to Grace. Thank you.

(END)