**WorkforceGPS**

**Transcript of Webinar**

**Subpart F, Part 2: Trade Adjustment Assistance (TAA) Final Rule**

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GRACE MCCALL: And welcome to "Subpart F Training, Part Two." So without further ado, I'd like to turn things over to one of our speakers for today, Tim Theberge, lead policy analyst, OTAA/ETA. Take it away, Tim.

TIM THEBERGE: Thanks, Grace. So good afternoon. My name is Tim Theberge. And presenting with me today is Julie Baker. Julie, over to you.

JULIE BAKER: Hi, this is Julie Baker, supervisor, Office of Trade Adjustment Assistance, Employment and Training Administration. As Tim mentioned, I will be presenting today with Tim Theberge, also of OTAA. And I'd like to say good morning and good afternoon.

Also note that the speaker notes are in today's PowerPoint in the file share window if you'd like to download that and follow along. Also during the presentation, please be sure to enter your questions into the chat window; we have a team standing by. And lastly, please consider having a copy of the Final Rule open so you can follow along with this Subpart F part two.

Today's objectives we'll be covering work-based learning; supplemental assistance; voluntary withdrawal from training; state standards and procedures for establishing reasonable costs of training; training for adversely-affected incumbent workers; training benchmarks; amending approved training; and payment restrictions.

So Subpart F governs the training portion of the TAA program. Training is an opportunity to gain skills and re-enter the workforce after a total or partial separation or threat of separation from adversely-affected employment. The TAA program's goal is to help each trade-affected worker participating in the program obtain suitable employment when possible.

Training under the TAA program should assist a trade-affected worker in obtaining the skills necessary for employment as quickly as possible and at a reasonable cost. With these principles in mind, training should allow workers to compete for the highest paying employment achievable, given their pre-existing skills, abilities, and education, and the current and projected job market. This is part two of a two-part session.

We'll begin with work-based learning, Section 618.635, which sets forth detailed requirements for on-the-job training – or OJT – customized training, and apprenticeship. The requirements in paragraph (a) of this section were not fully implemented in the previous regulations, 20 CFR part 617, so several new provisions have been established to implement statutory requirements from Section 236(c) of the act.

On-the-job training. So this Final Rule sets out all the requirements for OJT in one location.

In Section 618.635, paragraph (a)(1) provides the description of OJT that follows the statutory definition at Section 247(15) of the act. OJT must be provided under a contract between the state and an employer, which may be either the public or private sector, including nonprofits.

Paragraphs (a)(1)(i) through (iv) provide that the OJT: one, can reasonably be expected to lead to suitable employment with the employer offering the OJT; two, is compatible with the skills of the worker; three, includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and four, can be measured by standards or targets that indicate the worker is gaining such knowledge or skills.

Paragraph (a)(2) describes components of related education. Classroom training, sponsored by the employer and as part of the contract, may be part of OJT and may be provided for part of the day with the balance of the training day in a productive setting or in some other described schedule.

Paragraph (a)(3) requires that that the OJT contract specify the duration of the OJT, and be limited in duration as appropriate. Although statutorily limited to a maximum of 104 weeks the length of an OJT contract must also be limited to the specific vocational preparation required for the occupation, as listed on O\*NET. And you can find O\*NET, www.onetonline.org.

Paragraph (a)(4) excludes certain employers from receiving OJT contracts.

Paragraph (a)(5) sets out the reimbursement provisions for the OJT contract at a rate of up to 50 percent of the wage rate for the OJT participant, limited to the duration of the contract.

Paragraphs (a)(5)(i) through (ix) are essentially unchanged from 20 CFR 617.25(a)(1) through (7), (9), and (10), except for minor language changes for clarification.

Paragraph (a)(6) contains the labor standards for approval of the costs of OJT.

Paragraph (a)(7) requires payments for OJT to be made to employers in monthly installments. This is a change from 20 CFR 617.25(a), which required payment in equal monthly installments. The dollar amounts of the monthly payments may fluctuate because, though paid at the same rate of pay, the payments may be based on different numbers of hours worked.

Paragraph (a)(8) provides that adversely-affected workers – or AAWs – engaged in OJT are not eligible for TRA. It also explains that the AAW may be considered ineligible for the HCTC, or Health Coverage Tax Credit, if that is available.

Paragraph (a)(9) allows for participants enrolled in OJT to also enroll in RTAA, if they are found eligible and all the requirements are met. And that is described in Subpart E.

Paragraph (a)(10) conveys that TAA program funds may be leveraged with WIOA funds to reach the maximum reimbursement level established under WIOA. And we phrase it that way because right now if you leverage the WIOA funds, the 50 percent from the TAA program plus an additional 25 percent under WIOA brings you to a 75 percent leverage rate – 75 percent reimbursement level.

But we didn't say exactly what the percentage is under WIOA because that's something that could change in the future. So that's why we phrased it in this way to say that the funds may be leveraged with WIOA funds to reach a maximum reimbursement level. And also remember that this is up to the amount; it doesn't have to be exactly that amount.

Paragraph (a)(11) states that the state must not approve OJT for adversely-affected incumbent workers – or AAIWs.

OK. Question. What does the term "long-term" mean in 20 CFR 618.635(a)(4)(i)? This is the exclusion of certain employers section and the excerpt is on the slide.

So the department explains that this is a statutory requirement at Section 236(c)(4)(A), and applies to employers who exhibit a pattern of failing to provide adversely-affected workers in OJTs with continued, long-term employment as regular employees. With this, states should apply a reasonableness standard.

Another question. Does the "wage rate" described at 20 CFR 618.635(a)(5) include all compensation, consistent with the definition of "wages" at 20 CFR 618.110?

So for purposes of reimbursing employers for the cost of training under OJT and apprenticeships, the term "wage rate" limits reimbursement to the hourly rate of pay for the worker and does not include any other compensation that may be included in the worker's wages.

OK. Moving on to customized training. Section 618.635 paragraph (b) implements provisions related to customized training, which is defined by Section 236(f) of the act, and sets forth specific requirements.

Customized training is a type of work-based training authorized under Section 236(a)(5)(A) of the act. Customized training was not addressed in 20 CFR Part 617 and is a source of many technical assistance questions. Implementing rules related to customized training provides clarification about this type of work-based training.

Paragraph (b)(1) describes that customized training meets the special requirements of a single employer or a group of employers and may be provided by the same, or a training provider, which could include state or local staff. An example would be a single machine shop or group of small machine shops that require employees with training on a specific tool, software package, or process.

Paragraph (b)(2) codifies that for the purposes of customized training, employers must commit to employ a trade-affected worker upon successful completion of the training. The employers must enter into an agreement with the state that describes the conditions that must be met and reiterates the expectation of employment after training is completed.

Paragraph (b)(3) requires the employers to pay for at least 50 percent of the costs for the training.

And paragraph (b)(4) explains the limitation from Section 236(a)(10)(B) of the act that adversely-affected incumbent workers are eligible for customized training if the position is for a position other than their adversely-affected position.

OK. Apprenticeships. 20 CFR 618.635 paragraph (c) is brand new and establishes apprenticeship provisions that specifically provide that both registered apprenticeships under the National Apprenticeship Act, as well as other training programs that include a paid work-based learning component and required educational or instructional component that results in the issuance of an industry-recognized credential, are approvable TAA training activities.

These provisions are based on Section 236(a)(5)(A) of the act. The requirement that an apprenticeship lead to a recognized postsecondary credential, which includes an industry-recognized credential, differentiates an apprenticeship from a regular OJT.

Paragraph (c)(1) limits the duration of the paid work-based learning component of an apprenticeship to a maximum of 130 weeks. So the paid work-based learning component is limited to 130 weeks. And that is in line with the general limitation on training duration. However, the length of the educational or instructional training component is limited only by the scheduled completion date of the apprenticeship.

In setting these time periods for apprenticeship training, the department considered that the average total program duration – from fiscal year 2009 to fiscal year 2017 – was 66 weeks and only 38 weeks of this time was spent in training. The average duration for TAA program participants in an OJT was 80 weeks, with 45 weeks of OJT instruction.

And the TAA program has been criticized in the past for keeping trade-affected workers out of the workforce while they are receiving benefits. Such criticism does not apply to OJT or apprenticeship because these are work-based trainings and participants are employed while participating in the TAA program.

The department concluded that Section 236(a)(5)(G) of the act allows the department to establish apprenticeships as a type of approvable training under the TAA program and to establish regulations governing them. Apprenticeship is not the same as a regular OJT and is therefore not subject to the duration limit of 104 weeks at Section 236(c)(3)(B) of the act.

Paragraph (c)(2) describes the expenses related to apprenticeship that can be covered using TAA program funds. These costs include expenses for the educational or instructional component of an apprenticeship – tuition, fees, tools, uniforms, equipment, books, et cetera. In addition, the employer may be reimbursed not more than 50 percent of the apprentice's regular wage rate for the cost of providing the work-based training and additional supervision related to the work-based training provided by the employer.

Paragraph (c)(3) prohibits states from entering into contracts with employers that exhibit a pattern of failing to provide apprentices with the successful attainment of an industry-recognized credential, or the apprenticeship completion certificate if it's a registered apprenticeship under the National Apprenticeship Act.

Paragraph (c)(4) is divided into paragraphs (c)(4)(i) and (ii). Paragraph (c)(4)(i) addresses compliance with registered apprenticeships under the National Apprenticeship Act. Paragraph (c)(4)(ii) addresses other apprenticeships. It explains that costs for an apprenticeship program will be approved if certain labor standards are met. Other apprenticeships would include, among others, the Industry-Recognized Apprenticeship Program, also known as IRAPs.

OK. To continue on with apprenticeship. Paragraph (c)(5) instructs the state to make individual benefit determinations on TRA benefits to adversely-affected workers and to inform the adversely-affected workers considering apprenticeship of the possible loss of eligibility for TRA and the Health Coverage Tax Credit, if available.

Paragraph (c)(6) allows for the combination of apprenticeship and RTAA, if all eligibility requirements under Subpart E are met. Subpart E is RTAA

Paragraph (c)(7) requires the state to enter into a contract with the employer that establishes the terms and conditions of the apprenticeship. The department made appropriate corrections to the regulatory text in the Final Rule by removing all references to sponsors in Section 618.635(c), since the term "sponsor" is a term specific to registered apprenticeship. We replaced it with the term "employer."

Also a side note, the department will be monitoring all participant outcomes achieved through apprenticeships approved under the act via coordination between OTAA and the Office of Apprenticeship, to ensure that adversely-affected workers who complete apprenticeships continue to successfully retain employment.

I also want to note that the Final Rule is silent on adversely-affected incumbent workers and apprenticeships. We expect it to be a rare situation that an adversely-affected incumbent worker would apply for apprenticeship training. That said, if you encounter a situation where an adversely-affected incumbent worker is looking to pursue an apprenticeship, please contact your regional coordinator and they can contact OTAA and we can discuss it further.

Also remember that the six criteria for the approval of training at Section 236(a)(1)(A) through (F) of the act also apply to apprenticeships.

Question. Does the language at 20 CFR 618.635(c) mean that states could require TAA program funding be used for registered apprenticeship programs only?

The answer to that is that the department reiterates that, consistent with Section 236(a) of the act and Section 618.610, states must approve a training if the participant meets the six criteria for approval of training.

Among other requirements, this determination necessitates careful review of a trade-affected worker's skills and experience, the knowledge the training would provide, and labor market conditions. Therefore, states may not, as a hard-and-fast rule, limit apprenticeships under the TAA program to registered apprenticeships, for that would exclude other apprenticeship programs before determining whether they meet the criteria that should result in approval.

However, if the state determines that a nonregistered apprenticeship under consideration does not meet the six criteria to approve the training, the state must deny the training. For example, in evaluating a non-registered apprenticeship under these criteria, a state may gather information that leads it to conclude the non-registered apprenticeship would not increase the trade-affected worker's likelihood of obtaining employment. If so, then the state may not approve that training.

If the state denies training on those grounds, the state must consider other trainings for the trade-affected worker that would meet the criteria for approving training.

Another note here on apprenticeships. An apprenticeship lasting five years, we use that as an example in the Final Rule. And that's an example; it's not a limit. Some apprenticeships will be shorter; a small number may be longer. There is no limit on the length of a training program that consists of an apprenticeship under these rules.

And again, TAA program funds may be used to pay for the entire length of the educational and instructional component of the apprenticeship even if it exceeds five years. However, the length of the paid work-based learning may not exceed 130 weeks.

Do states continue to report the training in required quarterly reporting if the participant is still enrolled in an apprenticeship and the educational/instructional component has not ended and the training is still ongoing?

The department recognizes that under this policy, a state will report on the same individual for the entire duration of the apprenticeship.

And one final note in this section. Under many registered apprenticeship programs, participants are not charged any out-of-pocket costs, and it would not be appropriate to charge a TAA program participant either. Under apprenticeships, an employer is reimbursed for the extraordinary costs for supervision related to the work-based learning component of an apprenticeship.

OK. And over to you, Tim.

MR. THEBERGE: Thanks, Julie. So Section 618.640 discusses the requirements for TAA program-funded supplemental assistance in the form of subsistence and transportation payments.

Paragraph (a) and (b) describe general information and application instructions for supplemental assistance. It eliminates outdated references to expired workforce programs. Paragraph (a) also requires the need for such payments to be documented in the trade-affected worker's IEP, if available, or case file.

Paragraph (b) requires the trade-affected worker to submit an application for supplemental assistance in accordance with Subpart H and the processes established by the state.

Paragraphs (c) and (d) cover payments for subsistence and transportation. They codify the statutory provisions at Section 236(b).

Paragraph (c)(1) clarifies that subsistence payments include the costs of temporary living quarters – known as separate maintenance – meals, and incidental expenses.

Paragraph (c)(2) establishes the requirements for subsistence payments.

Paragraph (c)(3) limits the amount of subsistence payments to the lesser of the worker's actual per diem expenses for subsistence, or 50 percent of the prevailing per diem allowance rate authorized under the Federal Travel Regulations for the location of the training facility.

Paragraph (c)(4) requires states to make subsistence payments upon a worker's completion of a week of training, but allows states to advance a subsistence payment for a week if the state determines that doing so is necessary to enable the worker to participate in approved training.

Transportation payments, paragraph (d), provide that a trade-affected worker must be reimbursed for transportation expenses when commuting to and from a training facility located outside the worker's commuting area. Transportation payments are solely for those miles beyond the worker's commuting area.

This is a significant change from 20 CFR 617.28(b), which provides an allowance for the entire round-trip distance when the training is conducted outside the commuting area.

Section 236(b) permits, but does not require, the department to pay "where appropriate" supplemental assistance necessary to defray reasonable transportation expenses. The department limited TAA program-funded transportation allowances to those miles beyond the regular commuting area for several reasons.

The change is fairer to trade-affected workers who travel to training within the commuting area, who receive no allowance. It encourages trade-affected workers to attend training closer to home, which avoids the costs and disruption of a temporary relocation. And it preserves funds for actual training. Moreover, trade-affected workers may still be able to receive transportation reimbursement within their commuting area if they qualify under WIOA or a national dislocated worker grant.

Paragraph (d)(2) clarifies for the first time that the daily transportation payment may not exceed the amount of a daily subsistence payment that would be payable under paragraph (c)(3) of this section if the worker had resided temporarily in the area of training.

Paragraph (d)(3) provides that while other forms of transportation may be used, the payment to the worker may not exceed the cost per mile at the prevailing rate for personal vehicles established by the GSA.

Paragraph (d)(4) adds a new provision that a trade-affected worker must receive transportation payments promptly after completion of a week of approved training, and that payments must be made at a minimum on a monthly basis. This was added to make sure that trade-affected workers are not in a situation where they do not have the resources to take transportation to training because they have not been reimbursed within a reasonable period.

Paragraph (e) is new. It is intended to assist states in understanding how subsistence and transportation work together. It explains when a payment can be made for both subsistence and transportation. And paragraph (e)(1) newly clarifies that for the first and last day of arriving and departing a training, a trade-affected worker receiving subsistence may receive reimbursement for transportation.

This means, for example, that workers no longer have to choose between receiving mileage reimbursement for driving to a distant training and receiving reimbursement for the cost of a hotel the night before their training begins.

An example of paragraph (e)(1) would be where a worker travels outside of the worker's commuting area for a one-month training session. The TAA program would pay for travel on the first day out to the new location, subsistence during the training, and then for travel back home. On the first and last day, there could potentially be payments for both travel and subsistence.

This exception is also available, as described in paragraph (e)(2), in the event a trade-affected worker fails to complete the training for a justifiable cause.

Paragraph (f) requires the state to adjust the payments for transportation and subsistence for any advance payments already made to trade-affected workers, in order to take into account the amount of the advance that is more or less than the amount that the worker is entitled to receive.

Paragraph (g) is new. It clarifies that trade-affected workers must submit expense receipts. This will help to ensure proper accounting and management of federal funds and is consistent with Subpart D regarding expenses for job search and relocation allowances available to adversely-affected workers. This will also help states with calculating transportation reimbursement outside of the commuting area.

Question. Does the language at 20 CFR 618.420(c)(2)(iii) (sic), which generally prohibited subsistence payments for any day a trade-affected worker receives a daily commuting transportation payment from TAA program funds or another source, allow subsistence payments for days when an absence is excused?

The department has specifically disallowed subsistence payments on days where an absence is unexcused. The state would be required to determine if a subsistence payment is necessary in the event of an excused absence.

Is the maximum limit on reimbursement of mileage outside the defined commuting area referred to a daily or overall limit?

It's a daily limit, as provided in 618.640(d)(2) and (3). The state must determine whether it is more cost effective to provide subsistence payment in lieu of daily transportation costs outside the commuting area. If the state determines that subsistence would be more cost effective, the trade-affected worker may choose to commute each day, but will be reimbursed only the costs determined under the subsistence benefit.

Would mileage reimbursement begin at the mile beyond the definition rather than mile one for trade-affected workers traveling beyond the normal commuting area? And do all workers attending training now receive transportation reimbursements?

As stated in 618.640(d), reimbursement is for mileage beyond the commuting area. Thus, mile one is the first mile outside of the regular commuting area. Trade-affected workers may receive supplemental assistance, including transportation, only if it is part of a TAA-approved training program.

Are states permitted to set definition of commuting distance?

The Department has determined that states may set new definitions or look to applicable state law. If no such law exists, states will need to establish a definition for purposes of this Part 618.

Section 236(b) of the act provides that when trade-affected workers are outside of their commuting area, supplemental assistance may be provided where appropriate. The Final Rule establishes conditions for such assistance and reflects the department's determination for when supplemental assistance is appropriate.

Under the TAA program, the department considers reimbursing mileage within a defined commuting area a supportive service that would be allowed under a partner program, such as WIOA. The definition of commuting area, or commuting distance, is left to the states. This definition may already exist in state UI law, regulation, or program policy. If no such definition exists, the state must establish one for purposes of the TAA program.

Could states choose if payments will occur on a weekly or monthly basis?

The Final Rule provides, at 618.640(c)(4), that the state must make subsistence payments upon a worker's completion of a week of training, but may advance a subsistence payment for a week if the state determines that such advance is necessary to enable the worker to participate in the approved training.

Paragraph (d)(4) states that a worker must receive transportation payments promptly after a completion of a week of approved training, but at a minimum on a monthly basis. These payments also may be made in advance in order to facilitate the worker's attendance at the training.

Paragraph (f) says that if the state advances subsistence or transportation funds, the state must adjust subsequent subsistence and transportation payments to take into account the amount of the advance.

With the availability of electronic payment processing, the department does not conclude it is an undue burden on states, and that many trade-affected workers are already under financial strain. The TAA program provides sufficient funding to the states to meet the requirements and ease the additional financial burden placed on workers that need to travel to participate in training.

Another question. Do training participants who travel on a weekly basis have to submit receipts for gas?

The Final Rule provides that trade-affected workers travel in accordance with the Federal Travel Regulations. If a worker is traveling by privately-owned vehicle, the program reimburses at the rate established by the rate per mile, which is determined by the General Services Administration. The GSA rate per mile takes into account wear and tear, as well as regular maintenance costs, as well as the cost of fuel. So, the receipts in question would be for purchased transportation, such as rental cars, buses, trains, airfare, ride-share services, tolls, et cetera.

Receipts are required for these other types of transportation costs but are not needed for fuel unless a worker is utilizing a rental car. A State may use an online mapping tool to determine the mileage traveled. If the training location does not change, the mileage would need to be documented only once.

Voluntary withdrawal from training. This is 618.645. This establishes a new requirement, added for the first time, for a trade-affected worker's voluntary withdrawal from a training program. This provision has no comparable counterpart in existing regulations or in administrative guidance.

During its oversight of the TAA program, the department has encountered numerous situations where a worker has withdrawn from training. States have also requested technical assistance and interpretations of the act and regulations related to this topic. This section seeks to provide direction to the states on this topic.

Paragraph (a) provides that the state must advise a trade-affected worker who chooses to withdraw from a TAA-approved training that the withdrawal may, subject to the requirements of Subpart H, be established as an overpayment; and may, subject to Subpart G, result in ineligibility for TRA.

Paragraph (b) provides an exception for services in the Uniformed Services.

Paragraph (c) allows for a trade-affected worker who ceases participation in training for justifiable cause to resume the approved training program.

Paragraph (d) recognizes that workers who withdraw from training may still receive job search and relocation allowances.

The Final Rule is different than the proposed rule. The department did this to clarify that if a trade-affected worker wishes to withdraw from training, he or she may do so, subject to the provisions of this section. A state cannot subsequently deny training, after initially approving a training program, based on a later availability of suitable employment. This edit conforms to the changes made to 618.615 and 618.630.

While the provisions requiring states to notify trade-affected workers that voluntary withdrawal from training may be established as an overpayment and may result in ineligibility for TRA is new, the requirement to establish and collect overpayments related to training is not new and was included in 20 CFR 617.55.

Paragraph (e) is not a new requirement but was clarified in previously issued administrative guidance. The goal of TAA-approved training is to help trade-affected workers obtain suitable employment. Therefore, states must provide training for TAA program participants as approved by the state in the training program, even if the adversely-affected worker becomes employed in suitable employment during the training.

The State must evaluate, with input from the worker, how the employment impacts that worker's training program, and whether the program needs to be amended. They must determine that training completion serves the long-term employment goals of the worker; and the AAW must continue to meet benchmarks that were established as part of the approved training program, even though the employed worker is not likely to be eligible for TRA payments.

(Section) 618.650 covers the reasonable cost of training. This describes limitations on states that establish a policy for defining the ceiling on training costs payable for trade-affected workers.

States must follow the "prudent person" test to determine if the training costs are reasonable and necessary for the trade-affected worker to achieve the goals of the TAA program. Additionally, states must also comply with the standards for reasonableness in 618.610(f)(2), which is criterion six, including those permitting states to allow training other than the least-cost option if the extra cost is justified by better worker outcomes or a faster return to the workforce.

To achieve the goal of expanding training opportunities for the largest number of trade-affected workers, the department determined that states are not prohibited from setting specific training limits, such as those that might match those under WIOA, as a tool to ensure they approve training for trade-affected workers at a reasonable cost that will lead to employment.

Paragraph (a) informs the states that training limits may be established. If they are established, they must reasonably take into account the varying costs for training throughout the state. The department is concerned that a statewide training cost ceiling could result in unnecessary barriers to training for trade-affected workers.

In addition, the state must have a method to approve training that exceeds the training cap, and must include a requirement that a local area secure state approval to exceed the statewide training cost ceiling prior to approving the training.

Paragraph (b) requires the state to develop a policy that allows for consideration and approval of training costs that exceed any limit set by the state. If used, this exception will prevent the denial of a training program solely based on cost limitation.

While the department expects states will be judicious in granting exceptions, the department recognizes that there will likely be cases in which relief is appropriate. The policy must include transparent standards and procedures that provide for prompt consideration of any request to exceed the training cost limit.

Paragraph (c) requires the state to propose an alternative training program, when training is not approved due to exceeding the state's cost limit.

Paragraph (d) requires states to review their established policy on reasonable cost annually, and change or remove the limits when warranted.

Paragraph (e) requires that whenever a state establishes, modifies, or rescinds its policy, the state must notify the department and provide full documentation supporting its actions to the department for review.

Paragraph (f) explicitly provides that there is no requirement that a state establish a policy on training costs.

Julie?

MS. BAKER: Great. Thank you, Tim. Moving on to training for adversely-affected incumbent workers, section 618.655. This is new and it addresses the approval of training for adversely-affected incumbent workers, or AAIWs.

This section implements Section 236(a)(1) of the act and allows workers threatened with total or partial separation from adversely-affected employment – AAIWs – to begin TAA-approved training before their separation.

TAA program-funded training for AAIWs is intended to allow earlier intervention where layoffs are planned in advance and the employer can specifically identify which workers will be affected, or where the threat of separations are possible. AAIWs may begin training before a layoff, thereby reducing the time needed to complete the training program after the separation occurs and reducing the duration of the worker's weeks of unemployment.

Training options for an AAIW should be designed to meet the long-term needs of the AAIW based on the expectation that the AAIW will be laid off. Training programs may also be amended.

The criteria and limitations for approval of training for AAIWs are the same as they are for adversely-affected workers – or AAWs – except for certain exclusions. AAIWs, like AAWs, are entitled to supplemental assistance – transportation and subsistence payments – and employment and case management services.

In Section 618.655 paragraph (a) clarifies that AAIWs are eligible for approved training before separation, and further clarifies that AAIWs may apply for training and states may approve training for any AAIW at any time after the date on which they are determined to be individually threatened with separation, regardless of filing for, receiving, or exhausting UI.

Paragraph (b) clarifies how a state will verify that an AAIW is threatened with total or partial separation. This paragraph explains that an AAIW is threatened with total or partial separation when the AAIW has received a notice of termination or layoff from employment. Verification of a threat of total or partial separation may be obtained from the firm that is trade-impacted or another reliable source that the state determines to be appropriate.

Paragraph (c) states that the provisions of Subpart F extend to AAIWs, unless otherwise noted. It also lists exceptions that apply to AAIW training. Paragraph (c)(1) explains that training may not be approved for an AAIW if such training includes an OJT component. This is consistent with Section 236(a)(10)(A) of the act.

Paragraph (c)(2) implements the statutory requirement in Section 236(a)(10)(B) of the act that customized training may not be approved for an AAIW unless the training is for a position other than the AAIW's adversely-affected employment.

Paragraph (d) implements Section 236(a)(11) of the act, and provides conditions for terminating the approval of training for AAIWs, under certain conditions.

Paragraph (d)(1) requires the state to continue to monitor that the threat of total or partial separation continues to exist for the AAIW during the course of training approved under the act. The state must periodically verify with the AAIW's employer that the threat of separation still exists before funding each subsequent portion of the training.

Paragraph (d)(2) provides that if the threat of separation is removed, TAA program funding of the AAIW's training program must cease at the conclusion of the most recently funded portion, or semester or quarter. The AAIW will be allowed to complete any portion of the training program for which the TAA program has already recognized an accrued expenditure; however, no additional funding will be available while the threat of separation is removed.

Funding may resume for the original training program that had been previously approved upon determination by the state that the threat of separation has been reestablished, or upon total or partial separation from adversely-affected employment, so long as the requirements under 618.610 are still met. The approved training program must be amended in compliance with Section 618.665(a)(1)(ix).

Paragraph (d)(3) clarifies that, as with all training approvals under the act, the AAIW is only eligible for one training program per certification. Thus, a training program begun prior to separation and while under a threat of layoff continues to constitute the one allowed training program available to that AAIW.

Paragraph (d)(4) provides that the training duration limitations addressed in Section 618.615 are applicable to training program approval for AAIWs.

Paragraph (d)(5) further emphasizes that an AAIW will not be eligible for a new or different training program when a total or partial separation occurs. However, the existing training program may be amended under the provisions of Section 618.665.

And lastly, paragraph (d)(6) provides that the state must not consider the AAIW's threatened employment suitable employment under 618.610(a). Without this interpretation, training for the AAIW would otherwise never be approvable.

Paragraph (e) explains that an AAIW may transition to an AAW.

Paragraph (e)(1) provides that the separation must occur prior to the expiration of the petition under which the AAIW was determined to be threatened, and the total or partial separation must be for lack of work.

Paragraph (e)(2) specifies that once an AAIW has become an AAW, under the conditions specified in paragraph (e)(1), the worker's approved training program must be amended, as described in Section 618.665, and the state must determine what other benefits under the TAA program the worker may now be eligible for, including TRA. Any time spent in training as an AAIW applies to the training duration limits contained in 618.615.

Moving on to benchmarks. Section 618.660 is new and provides the process for establishing and monitoring compliance with training benchmarks.

Benchmarks are required by Section 233(f)(3)(A) of the act when the trade-affected worker enrolls in an approved training program that will extend beyond the duration of payable weeks of basic TRA and additional TRA, for the purposes of eligibility for completion TRA. This is in accordance with Subpart G that we will be training on next week.

Although AAIWs are ineligible for TRA, establishing training benchmarks is recommended, as an AAIW may become an AAW. The purpose of training benchmarks is to allow early and ongoing assessment of the performance of a training participant to determine whether the original training program is a good fit. Benchmarks also function as a protection of the appropriate expenditure of TAA program funds. This section implements existing operations of the TAA program, meaning this is new to the regulations but should not be new to all of you.

Paragraph (a) of Section 618.660 requires states to establish and document training benchmarks for adversely-affected workers – and it is recommended to do so for adversely-affected incumbent – so that they can meet completion TRA eligibility requirements described at Subpart G at 618.765.

The benchmarks must be established when the trade-affected worker enrolls in an approved training program so that the state can monitor the worker's progress toward completing the approved training duration limits at 618.615. Inclusion of benchmarks should occur when the training program is initially established and approved; and, in the unusual event that benchmarks are not included in the initial training program, at such time the training program is amended.

Paragraph (b) requires training benchmarks to be established for all but short-term training programs, such as a three-month certificate program. The establishment of benchmarks is a useful practice and may be required later in the AAW's training if unanticipated circumstances arise that extend the training beyond the duration of payable weeks of basic TRA and additional TRA.

Paragraph (c) provides that to review the trade-affected worker's progress against the benchmarks, states may request that the training provider provide documentation of the worker's satisfactory progress, including instructor attestations, progress reports, et cetera. The case manager may attest to the worker's progress after consultation with the vendor and the worker.

Paragraph (d) requires the benchmarks to be described in the trade-affected worker's IEP, if available, or otherwise documented in the worker's case file.

Paragraph (e) requires that benchmarks be flexible enough to allow for some variability, and both practical and measurable enough to allow administration across a broad spectrum of training scenarios and state environments.

These benchmarks are related to, but differ from, the requirement that an adversely-affected worker participate in training as a condition of eligibility for TRA. Participation in training merely requires that an AAW must attend scheduled classes and required events, or otherwise follow the rules of the training program in accordance with the requirements documented by the training provider; while training benchmarks measure satisfactory progress of the trade-affected worker during their training.

Training benchmarks may be used to provide early intervention that will provide the opportunity to determine whether the training program in place is appropriate for the trade-affected worker or whether it would be prudent to amend the training program to meet the needs of the worker better.

Section 233(f)(3) of the act requires an AAW to substantially meet performance benchmarks to remain eligible for completion TRA. There are two benchmarks that must be met. The first is that the AAW is expected to continue to make progress towards the completion of the training. The second is that they are on schedule to complete the training during that period of eligibility.

In Section 618.660(f), the department interprets these benchmarks to mean that the adversely-affected worker is maintaining satisfactory academic standing – for example, not on probation or determined to be at-risk by the instructor – and is on schedule to complete training within the timeframe identified in the approved training program.

Another example is that a single course failure or missed week of attendance may contribute to a failed benchmark but should not, on its own, make the AAW ineligible for completion TRA.

Paragraph (f) requires these benchmarks to be evaluated and documented at least every 60 days, beginning with the start of the approved training program.

Under paragraph (g)(1), upon failure to meet either or both of the benchmarks for the first time during the same evaluation period, the state must provide a warning to the AAW that their eligibility for completion TRA is in jeopardy. The warning may be provided verbally, in writing, or both, and must be documented in the worker's case file.

An AAW's approved training program may be amended after they fail to satisfy one or both training benchmarks for the first time. There is no requirement to wait for a second substandard review. If the first-time benchmark failure is of a magnitude as to make a failure at a later benchmark review likely, then the State should reevaluate the training program, if necessary, to improve the likelihood that the AAW will complete the training program.

Similarly, if an AAW is failing two courses in one benchmark assessment period, this will result in only one substandard review. However, if the failure of two courses makes timely completion of training under the approved training program unlikely, then the training program should be amended.

Paragraph (g)(2) provides that if an adversely-affected worker who has previously failed to meet a benchmark under paragraph (g)(1) fails to meet a benchmark during a subsequent benchmark review under paragraph (f), the state must notify the worker of their ineligibility for completion TRA.

An adversely-affected worker may elect to continue in the approved training but will not receive any completion TRA payments; o, the training program must be amended. Once amended according to Section 618.665, completion TRA payments may resume.

In cases where a state denies payment of completion TRA because the AAW has not made satisfactory progress toward training benchmarks, the AAW may appeal the determination through the appeal process described in Subpart H at Section 618.552. An adversely-affected worker may refuse an amendment to the training program but will then not be eligible for completion TRA.

Question. Do training benchmarks apply to adversely-affected incumbent workers in training? And if not, can the state require benchmarks for all trade-affected workers in training in order to monitor adequately their progression through trainings?

The department encourages states to utilize training benchmarks for all workers, including adversely-affected incumbent workers. AAIWs are ineligible for completion TRA, but as the AAIW may become an AAW upon separation, it is highly recommended that training benchmarks be put in place at the start of the AAIW's approved training program.

Are adversely-affected workers disadvantaged in states that require benchmark reviews more frequently than every 60 days, since workers would have less time to demonstrate their progression within a training program and would be more likely to fail subsequent reviews?

The 60-day period was established in prior administrative guidance and the department recognizes that many states have implemented case management processes that require a check-in with workers at least once every 30 days, which can inform a benchmark review but not take the place of one.

The department has determined that this time period is sufficient and meets the requirement at Section 618.660(e) that training benchmarks be flexible enough to allow for some variability, and both practical and measurable enough to allow administration across a broad spectrum of training scenarios and state environments.

What do we mean by the inclusion of benchmarks should occur when the training program is "initially established and approved," because contracts are sometimes placed months in advance of the start of a training program?

So the answer is that Section 618.660(f) requires that benchmarks are to be evaluated and documented every 60 days, beginning with the start of the approved training program. This may or may not align with when the contract is executed or an enrollment occurs. The 60-day period starts on the first day of actual training.

Can a state take corrective action and provide assistance to an AAW if the state learns that the AAW is struggling with his or her training because of failing or withdrawing from classes?

The state can provide assistance to the worker in a proactive manner in order to ensure a timely and successful completion of the training. The department affirms that any corrective action taken should be documented on the worker's IEP and could include amending the training program.

Also note that the department has determined that, after the first failure of a benchmark, if a warning and training program modification corrects the issue, then the failure resets and the AAW is considered to have no failed benchmarks.

If, however, a first failure is not resolved and a second benchmark is failed with the first benchmark failure still outstanding, then a training program modification is required. If the worker fails to comply with the requirement to amend his or her training program, the worker must be notified of his or her ineligibility for completion TRA. If the training program is amended, the worker can resume training and remain eligible for completion TRA.

OK. Moving on to amending training programs. Section 618.665 provides conditions for amending an approved training program.

(Section) 618.665 greatly expands upon the prior regulatory provision. The second sentence of 20 CFR 617.22(f)(3)(ii) merely permitted an amendment to add a course designed to satisfy unforeseen needs of the individual, such as remedial education or specific occupational skills.

This Section 618.665 recognizes that a more substantial amendment may be necessary to provide trade-affected workers with skills necessary to obtain employment, and it sets forth the circumstances and conditions under which amendments must be made.

The ability to amend a training program is not new but does require some additional structure to ensure consistent treatment of trade-affected workers.

Paragraph (a) requires the state to work in cooperation with the trade-affected worker in amending a training program where the need for such amendment was not foreseeable and where the customer demonstrates good cause for the need to amend.

Paragraphs (a)(1)(i) through (x) provide the list of conditions to be met for an amendment to be appropriate. One or more of the conditions must be met.

Paragraph (a)(2) provides that the training duration limits at 618.615(d)(3) apply to amended programs. So you cannot amend training to go beyond the training duration limits.

Paragraph (a)(3) requires an amendment to be made before completion of the original training program. You can see on the slide here some of the conditions for amending.

OK. Moving on. Looking at criteria to be met, paragraph (b) sets forth the criteria that must be met in order for a training program to be amended. The department concludes that since the state is amending an existing approved training program, not all of the training approval criteria described in 618.610 apply to an amendment.

For example, since the state already determined that there was no suitable employment available when the training program was originally approved, it is not reasonable to conduct a subsequent review of available suitable employment in order to amend a training program.

As a result, paragraphs (b)(1) through (4) apply only criteria three through six of the six criteria from 618.610 to amended training programs. So in order to amend a training program, it applies only criteria three through six of the six criteria of approval of training.

Question. Does 20 CFR 618.665(a)(1)(iv) apply if approval of a short-term training would improve employment prospects? And you can see subparagraph (iv) on your screen.

The answer is, under the Final Rule, a training program can be amended to shorten it if the shorter training will improve the likelihood of employment.

Another question. Did the department consider including a time limit on trade-affected workers' ability to amend their training program with a different occupational goal?

The department did consider establishing a time limit on when a trade-affected worker can amend his or her training program to another occupational goal, but decided not to in order to allow states flexibility to serve the varying needs of trade-affected workers.

Does 20 CFR 618.665(a)(1)(v), which explains that an amendment to an approved training program is appropriate if the worker cannot successfully complete the originally approved training program, extend to "any reason"?

So the department asserts that the concept of reasonableness always applies to federal regulations. This is not, and should not be viewed as, an allowance to amend for any reason.

With respect to the limit of one training program per certification set forth in 20 CFR 618.655(d)(3), what circumstances would transform a training amended to an entirely new training program?

So a training program may be amended up until the time the trade-affected worker has completed the entire training program as originally approved. Only if a worker had completed his or her approved training program, and then sought additional components to add to the training program, would there be a second training program.

The Department affirms that the provisions established in Section 618.665 are sufficient to prevent workers from receiving more than one training program per certification and do not establish entitlement to a second training program.

Allowing amendments is not the same as providing a second training. Amendments are merely modifications to the trade-affected worker's one training program. The one training program policy is still in place. A worker could not, for example, complete an entire training program and then apply for another training program.

Wouldn't it make more sense to consider general labor market information, rather than just the information in the worker's case file, when seeking to amend an approved training?

The department affirms that the regulatory text at Section 618.665(b)(1) requires an examination of the labor market conditions at the completion of the training program. If the end date of the training program has been modified, or will be modified as a result of the amendment, the state would need labor market information beyond that which is likely to already be included in the trade-affected worker's case file.

Can the worker's original occupational goals be amended?

So a change in occupational goals is not prohibited. The IEP is dynamic and can and should be revisited throughout a trade-affected worker's enrollment in the TAA program. If a change in occupational goal is determined to be appropriate, the IEP will need to be updated.

And I will tell you this; this is a change from how we've been administering this policy. So this is a change in policy, so you definitely want to take another look at this, as well as look through the entire criteria for amending approved training.

OK. I think this is ready to turn over to Tim. Over to you.

MR. THEBERGE: Thanks. So we're now on payment restrictions for training programs. This is 618.625.

Paragraphs (a)(1) through (3) discuss sources of funding for Trade-approved training.

Paragraph (b)(1) provides that states must ensure that the TAA program funds are not used to duplicate payment of training costs by another source.

Paragraph (b)(2) is unchanged from the existing rule.

Paragraph (b)(3) follows the existing rule with only minor word changes, and addresses state establishments of non-duplication procedures.

Paragraph (c) permits the state to share training costs.

Paragraph (c)(1) contains new provisions. It codifies that TAA program funds are the primary source of federal assistance to trade-affected workers. It also implements Section 236(a)(4)(A) of the act, which forbids all other funding under federal law when the TAA program pays the training costs for a trade-affected worker.

However, if the costs of training exceed available state TaOA funds, and if the department has notified the states that there are no remaining funds to allocate, including reserve funds, then States may use other sources to continue funding training, as provided in paragraph (d)(2)(ii) of this section.

Paragraph (c)(2) is new. It allows states to share training costs with authorities administering non-federal, state, and private funding sources, provided that there are insufficient TAA program funds to cover the total cost of training. This was added to give states more flexibility to enter into cost-sharing arrangements with non-federal entities.

Paragraph (c)(3) prohibits reimbursement from TAA program funds of any training costs that were accrued before the approval of the training program under the TAA program.

Paragraph (c)(4) describes prearrangements and what is required in those agreements. The rule explains that these agreements may be entered into on a case-by-case basis to address specific training situations of trade-affected workers, or they may be part of a statewide strategy. Pre-arrangements help prevent duplication of the payment of training costs. They also help ensure that training costs that are reimbursable are not paid from TAA program funds.

In addition to describing that pre-arrangements must be specific, binding agreements entered into before TAA program funds are obligated, paragraph (c)(4)(ii) provides new flexibility to states to determine that after a training program has been approved and TAA program funds have been committed, if funds become available under another source, the state may decide to continue to pay for the training under the TAA program or share those costs.

If the decision is made to share those costs, the state must enter into a pre-arrangement with the other funding source. The department has added this provision for clarity because it specifically covers a situation not previously addressed in the regulations.

Many states have adopted tuition-free community-college programs for residents, and states will need to determine which program best meets the needs of trade-affected workers. If a cost-sharing agreement is put into place after the training program has been approved, the worker's approved training program must be amended to reflect the pre-arrangement.

Paragraph (c)(4)(iii) will help avoid duplicate payments of training costs by requiring the worker to enter into a written agreement with the state providing that program funds will not be applied toward, or used to pay, any portion of the costs of the training that the worker has reason to believe will be paid by any other source.

Paragraph (c)(5) prohibits states from considering payments to the trade-affected worker under other federal laws that do not directly cover the costs of training when determining the amount of training costs payable from the TAA program funds. This includes, but is not limited to, Pell Grants, benefits under Supplemental Educational Opportunity Grants, federal educational loan programs, Presidential Access Scholarships, federal student work-study programs, and Bureau of Indian Affairs Student Assistance.

A state may not consider federal student financial assistance in determining whether to approve training under the act, and may not require the worker to use such funds to pay the costs of approved training. Federal student financial assistance paid directly to a worker is no longer deducted from the worker's TAA program benefits. The relationship between federal student financial assistance and TRA is discussed in Subpart G.

Paragraph (c)(5) also addresses the transition of federal student financial assistance recipients from WIOA and other programs to the TAA program. Specifically, WIOA limits WIOA-funded training services to individuals who are unable to obtain other grant assistance for training services, including through Pell Grants, or who require assistance beyond that made available under other grant assistance programs.

Federal student financial assistance must cease to be applied to tuition and other training related costs that are covered by TAA program upon transition to the TAA program.

Paragraph (c)(6) has been added as a result of states' technical assistance questions to the department. It addresses the situation where a trade-affected worker's firm agrees to fund training costs under conditions that may make the worker liable for all or a portion of those costs if certain conditions are not met.

For example, the employer may offer separated employees paid training, but require the worker to reimburse the employer if the worker does not maintain a certain minimum grade point average. If the training is otherwise approvable under the act, this provision would require the state to contract with an adversely-affected employer to assume any unfunded costs on the worker's behalf.

Thus, in the above example, if the employer required the worker to maintain a 2.5 GPA or lose the paid training benefit, the worker could enroll in and receive employer-funded training; and, if the worker later achieves only a 2.4 GPA, the agreement would allow the state to assume the cost of training and not require the worker to reimburse the employer.

Paragraph (d)(1) is new. It combines requirements at Section 236(a)(7)(A) through (C) of the act into a single statement. The act states that the secretary shall not approve a training program if: all or a portion of the costs of such training are paid under any non-governmental plan or program; the trade-affected worker has a right to obtain training or funds for training under such plan or program; and such plan or program requires the worker to reimburse the plan or program from funds provided under this chapter, or from wages paid under a training program, for any portion of the costs of such training program paid under the plan or program.

Paragraph (d)(1) simplifies these statements by prohibiting the use of TAA program funds or wages paid from the training program to reimburse all or any portion of training costs from any source, regardless of whether it is from a federal, state, non-governmental plan or program, or another source. The authority for this is provided by combining various sections of the act.

Paragraph (d)(2)(i) prohibits the approval of a training program if the trade-affected worker is required to obtain funds or pay training costs from TAA program funds, or any funds belonging to the worker from any source.

Paragraph (d)(2)(ii) requires that if no TAA program training funds are available, the states must seek other funding, including the use of WIOA national dislocated worker grant funds, to provide training.

That brings us to the end of part two. We do have some time left, so if you want to ask any additional questions, please do so. You can add those to our session, to the chat, and we will try to answer them before we end.

There are some resources we want you to make sure you are aware of. The first is the TAA community on WorkforceGPS. Then we have our official TAA program website. Please be advised that we have updated our website address recently. We have the link here to the official version of the Federal Register posting, and then we have a link to the official version of the rule.

We do have a few questions. One is, "Where do scholarships fall? Does the state take those into account when determining the unmet need of the participant?" So in general, no. It depends on what the terms of the agreements of those scholarships are for. So some scholarships are very specific and can only be provided – can only be used for certain activities. So it's harder for me to weigh in on the answer of scholarships since those vary by what those costs can be used for.

Relative to Pell, it's an easier answer. What we want to happen and what should happen is that the minute a trade – a worker is Trade-certified and the training is Trade-approved, we want the training institutions and others to charge the trade program first for those costs.

So if there's a change in the semester or a change in the quarter, at that point is where the discussion should be with the training provider that the priority funding should be TAA funding at that point, rather than those Pell funds. Because those Pell funds can be used for other costs that Trade training dollars cannot be.

MS. BAKER: Yeah. And Tim, I would just add to that as well, this is extremely common and something that everybody should be aware of because, especially now that we have mandated co-enrollment with WIOA dislocated worker, if you have a participant who was served by WIOA before coming into the Trade program – like, they started training under WIOA while their petition was being under investigation – once that position has been certified, they transition into TAA program. But under WIOA, pretty much everyone has already applied for the Pell.

So this is extremely important and this is something that is not new. This has been the case for many, many years that when they reach the first break in their semester or quarter break and they make that transition over to the TAA program, those Pell grants need to stop being applied to tuition because TAA is going to pick up those costs.

MR. THEBERGE: So we do have three remaining webinars for you to consider attending. That is Subpart G on Monday, Subpart H on Wednesday, and Subpart I on Friday. That will be the end of our phase one of our TAA Final Rule training.

If you have any additional questions that we did not get to today, that we were unable to answer, or if we specifically asked you to submit them to us, please do so at regulations.taa@dol.gov. We have a team of feds standing by to review your questions and respond to you.

The easy ones we'll get you a fairly quick response. Others that are more involved might take us a day or two to get back to you on that. But again, please utilize that inbox and we will respond to your questions as they come in.

With that, thank you very much for your questions that have come in. Thank you for participating in this afternoon webinar on a Friday. We do appreciate your time.

With that, I will hand it back over to Grace.

(END)