**WorkforceGPS**

**Transcript of Webinar**

**Subpart H: Trade Adjustment Assistance (TAA) Final Rule, State Administration**

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GRACE MCCALL: And welcome to "Subpart H, State Administration." So without further ado I'd like to turn things over to Tim Theberge.

TIM THEBERGE: Thanks, Grace. This is Tim Theberge. I am your moderator for today. Presenting with me today will be Julie Baker.

JULIE BAKER: Hi, everybody. This is Julie.

MR. THEBERGE: We have no shortage of content and limited time, so we are going to move through this. I will remind all of you that you can download this presentation with the speakers' notes via the file share pod. Also in that file share pod is a copy of the Final Rule so that you can follow along.

So we are going to cover everything and anything inside of Subpart H. I am not going to bother reading through these slides, but essentially this brings us all the way from 618.800 through 618.890 and then some. So we are going to go subject by subject, topic by topic, move through here.

Here if you have questions, please make sure to include those in the welcome – in the chat that will be on the left-hand side of your screen. That is where we will answer most of them, unless they fit in line with where we are. Again, given the sheer volume of information, we hope to move through this.

So Subpart H governs the administrative requirements and rules that states must follow in delivering TAA program benefits and services. There are some major updates to this. We are explicitly authorizing the use of subpoenas for states to compel firms to give you the worker list. That is not a new interpretation, but we have explicitly included it in the rules.

We are codifying the provisions related to the provision of Rapid Response and appropriate career services to all groups that file a petition. Again, it is important for states to remember that that is to be provided at the time the petition is filed, whether or not the petition is eventually certified.

We are explicitly directing states to seek out workers or groups of workers that are likely to be determined eligible, and to assist them with petition filing. So this is to make it clear to the states that there is an active role that they have in identifying those groups of workers and not just sitting back and waiting for petitions to be filed.

We are requiring states to maintain sufficient and effective technology solutions, and to dedicate a portion of their budget to do so. That is a new requirement.

We are codifying the TAADI process – the Trade Adjustment Assistance Data Integrity process – that has, until now, been covered in administrative guidance. That is now regulatory.

We are codifying – once again, you heard this in Subpart C, Subpart D, Subpart F – all travel under the Trade program follows the Federal Travel Regulations and we are providing regulations for equitable tolling and exceptions for military service.

We are including in these regulations the primary indicators of performance that align with WIOA. These are already in place and already reported, so there's no change from that perspective. We're just updating the rules to make sure they match.

We are being, again, explicit in our allowability of the use of paper or electronic records and electronic signatures, already allowed, has been allowed for some time. But we believe including it in the rule will make it easier for some states to fully implement that.

Relative to agent and liable state, we have updated the language on that as well, and we'll cover that.

One of the most significant updates is our modification of the existing rule on merit staffing. We are providing additional flexibility regarding that. The Governor-Secretary Agreement is additional language around those. What happens in the absence of an agreement?

We are also establishing regulations on the requirement for states to monitor the TAA program. Again, it is not a new requirement that states monitor the program; we're just providing large – we're providing guidance around what those sample sizes need to be and what you should be monitoring.

And we are providing general fiscal and administrative requirements, many of which were previously included in our annual financial agreements with the states.

So 618.800 lays out the scope for the subpart. It states that Subpart H covers the administrative requirements; that's really all there is to the scope.

Next is agreements. These are the Governor-Secretary Agreements, as they are called. This is the agreement between the states and the secretary that are required by Section 239 of the act for states to deliver TAA program benefits and services.

(Section) 618.804 lists the contents of the Governor-Secretary Agreement. These come from the statute. Highlights are here on the slide. This section no longer requires a newly-executed agreement following amendments to the act. We concluded – the department concluded – that requiring this might actually delay services to trade-affected workers and cause unnecessary interruption in program operations.

So when there is an amendment, we will likely require an amended Governor-Secretary Agreement, depending on how much has changed. If there are significant statutory changes especially, services will not be suspended while that process is completed. So that's why we are changing that particular provision.

The next is 618.808. This is state rulemaking. (Section) 618.808 provides states the authority and some flexibility to establish laws, regulations, procedures, and other policies related to the administration of the TAA program, while ensuring the department can administer uniform interpretation of the program throughout the United States.

So what does that mean for states? So although a state can publish laws, policies, and procedures, they must be submitted to the department for their review. They must be approved by the department. We can then later, with notice to the state, withdraw our approval of that policy or procedure or statute.

And paragraph (e) requires the state to follow any state or federal law that may require public notice or an opportunity for a hearing with regard to publishing that new regulation, policy, or procedure.

So again, the states are welcome to publish additional policies and regulations, but the department reserves the right to review them. That's how that process works.

How will the department approve state rulemaking? And would revisions to state regulations require departmental approval?

The provision regarding state rulemaking is not new. The process is not as formal as grant modifications and the process should not be overly complicated or formal. States are directed to submit the information to their TAA program contact at the regional office. The regional office will work with the Office of Trade Adjustment Assistance to review the information and provide a response to the state.

This process can occur entirely by email. Only in rare circumstances have state rules required significant discussion with the department. In general, the regional office and OTAA are able to provide a response to the majority of submissions made by states in a very reasonable amount of time.

Stand-alone forms are not required to be submitted to the department, although states are encouraged to follow the same process to receive feedback on any TAA program-specific forms to ensure that they do not contain policy issues.

MS. BAKER: Great. Thanks, Tim. Moving on to use of subpoenas, Section 618.812, authorizing states to issue and enforce subpoenas.

So paragraph (a) of 618.812 identifies the purposes for which subpoenas may be issued. The provisions align with the department's longstanding interpretation of the provision.

And paragraph (b) establishes that states may use subpoenas to gather information on individual members of a certified worker group. This addition clarifies the department's position and addresses the challenges that states face in obtaining timely information from employers in order to best serve trade-affected workers.

And lastly in paragraph (c), it describes the process for seeking enforcement of a subpoena.

Benefit information and provision of services to workers, Section 618.816, contains requirements the states must meet in providing TAA program benefit information and services to trade-affected workers. It also includes some of the requirements historically contained in the agreements with the states, for purposes of formal codification in regulation and allowing for public comment.

So paragraph (a), Providing information to workers, requires states to provide information about the TAA program to each and every worker who applies for UI. This is a statutory requirement. It's not new, but it is something that you must pay attention to if you haven't up until now.

Paragraph (b), Rapid Response and appropriate career services, is a statutory provision that requires states to provide Rapid Response assistance and appropriate career services, consistent with Section 134 of WIOA, to all groups of workers covered by a petition filed under Subpart B.

The governor, upon receipt of a petition for TAA, must ensure the availability of Rapid Response assistance and appropriate career services to the groups of workers covered by the petition. These services are to be provided as soon as possible after the petition is filed.

The department strongly encourages states to make the full suite of career services available under Title I of WIOA to groups of workers using Rapid Response funding to maximize layoff aversion. These services must be made available regardless of whether the petition is ultimately certified and regardless of the size of the layoff.

Paragraph (c), providing re-employment services, implements Section 235 of the act and requires States to provide specified employment and case management services to trade-affected workers. We did mention this in Subpart C and here is the cross-reference.

Question. Do states really have to provide information about TAA program benefits, application procedures, and filing dates to workers applying for UI? And wouldn't providing such workers with too much information pre-certification confuse them because the petition for certification may fail or the certification may not cover all of the workers – for example, because they quit or were terminated?

So the answer is that the notification requirement in Section 618.816(a) is not a new requirement. It is a statutory requirement, established at Section 239(g)(1) of the act. Most states meet this requirement with a statement on the web-based system used for UI claims or in the initial meeting or initial correspondence to new UI claimants.

Do states really have to provide Rapid Response services to all groups of workers covered by a petition filed under Subpart B?

Yes. This is not a new requirement and it is statutory. The department cannot reduce or qualify this requirement via regulation.

Moving on to petition filing assistance or active outreach. This is still in 618.816 and it's paragraph (d). States must facilitate the early filing of petitions for a group of workers that the state considers are likely to be eligible for TAA program benefits.

And the phrase "likely to be eligible" means the state has a reasonable belief that a certification will be issued for the group of workers, based on observations made by state staff; existence of certifications within the same industry, sector, or supply chain; or information or statements from the firm, union, workers, media coverage, or other reports.

States must provide assistance to file and to prepare petitions or applications for program benefits. And petitions must be filed even if the firm, a union, elected officials, or members of the group of workers oppose the filing.

Notification of workers, paragraph (e), requires states to provide certain information and assistance to trade-affected workers after issuance of a certification covering their worker group.

The act requires written notices to each trade-affected worker, via the U.S. mail, and a general notice through newspaper advertisements.

Paragraph (e)(1) requires states to inform the state board on vocational and technical education or the equivalent agency, and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under Subpart B and of projections, if available, of the needs for training under Subpart F as a result of such certification. These efforts should be coordinated with state and local workforce development boards – or LWDBs – established under WIOA.

Paragraph (e)(2) describes the information that must be included in the written notice mailed to each worker covered by a certification, including information regarding the training enrollment deadlines.

Paragraph (e)(2)(viii) specifically requires the state to include a Babel notice. A Babel notice is a short statement in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages.

Although this is the first explicit reference to this requirement in TAA program regulations, this is not a new requirement for workforce development or UI programs. The Department already addressed this practice in administrative guidance.

Paragraph (e)(3) provides that it is permissible to obtain a list of workers that are partially or totally separated from adversely-affected employment or threatened with separation via subpoena.

Paragraph (e)(4) maintains the requirement that notice of certification be published in a newspaper of general circulation.

This Final Rule eliminated the provision in 20 CFR 617.4(d)(2) that exempts the state from publishing a newspaper notice if the state can substantiate that all workers have received written notice about the certification. The department concluded that this was not consistent with the notification requirements contained in Section 225(b)(2) of the act.

However, after review, the department has concluded that notice may alternatively be placed in the online or digital version of a newspaper if it can reasonably be expected to reach the interested parties.

So those of you – and many of you remember that the states could be exempted from publishing the newspaper notice if they could show that all workers received that written notice. But now, that's gone. So you are required to publish in the newspaper of general circulation. But again, you can also place it on the online or digital version of the newspaper.

OK. Moving on to paragraph (e)(5). (Paragraph) (e)(5) requires that the state must perform outreach to, intake of, and orientation for trade-affected workers covered by the certification with respect to assistance and benefits available. There is no direct similar provision in the existing rule. Shocking. (Chuckles.)

Paragraphs (e)(6) and (7) are new provisions. Paragraph (e)(6) requires, in addition to the written notices sent by mail, that the state also use one method of modern electronic communication, such as email, to inform workers of the certification. The department has concluded that the use of modern communication methods will better give notice to workers of their entitlement to TAA benefits and, if applicable, other program opportunities available under the public workforce system.

Paragraph (e)(7) allows states the flexibility to use social media and other means to reach workers. So the department clarifies that the rule, as written, gives examples of alternative contact methods, including through an email or text message if the contact information is known.

If the state does not have an email address or mobile phone number of the trade-affected worker, then other methods of electronic communication, including postings made to social media or a website, would satisfy this requirement. States must safeguard any personal data and ensure costs are reasonable.

The department clarifies that there is no requirement that a state print out the emails or texts, as case notes are often sufficient for documenting these activities. And the state must comply with record retention requirements in the Uniform Guidance at 2 CFR Part 200.

Question. In paragraph (e)(1), regarding the provision of benefit information post-certification to a variety of potentially interested parties, wouldn't it be administratively burdensome to effect such notice when states have no way to forecast a worker group's training needs?

So this requirement is best met through regular contact with state, local, and regional workforce development boards. Coordination with Rapid Response also will help in determining the training needs of worker groups and the demand in the local labor market. States also can use their own data to produce projections based on similar trade-affected workers already enrolled in the program or previously enrolled in the program.

All right. Continuing on to specific benefit assistance to workers, or paragraph (f) of this section. This requires states to provide specific benefit assistance on all the benefits described in detail in this Part 618; and, if available, states must also include information on the Health Coverage Tax Credit.

In paragraph (f)(1), the department interprets Section 225(b)(1) of the act to require that the state provide notice to each member of the worker group that it can reasonably identify as being covered by a certification, whether or not that worker has applied for UI.

This is especially important for adversely-affected incumbent workers who are still employed and, thus, will not file a UI claim but are still potentially eligible for TAA-approved training and employment and case management services.

Where a petition has already been certified, the state must provide TAA program information to all trade-affected workers covered by the certification. Where a petition is still pending, the states must provide the TAA program information to the trade-affected workers covered by the petition following the issuance of the certification.

And paragraph (f)(2) emphasizes the need for the state to provide, in a timely manner, the information and employment and case management services that trade-affected workers are entitled to receive to preserve eligibility for TAA program benefits.

MR. THEBERGE: All right. Thanks, Julie. (Section) 618.820 covers determination, notices thereof, right? This is procedural requirements that apply to state benefit determination and redetermination processes.

So 618.820(a) through (d). Paragraph (a) provides that states must promptly determine an initial eligibility determination; (b) that states must promptly determine subsequent eligibility for the individual benefits under the TAA program. Paragraph (c) provides that redeterminations are subject to applicable state law. And paragraph (d) provides that states must use these regulations or, where permitted, applicable state law.

Paragraph (d), excludes an exception that the state law and regulations do not apply where they are inconsistent with TAA program regulations. This exception was unnecessary because the paragraph applies only to matters that, by the terms of the federal law, are decided under state law.

Paragraph (e) through (h). Paragraph (e), states must notify individuals in writing of any determination or redetermination under 20 CFR 618. Paragraph (f) requires the prompt payment of benefits when due, a requirement adopted from standard procedures under UI. Paragraph (g) requires compliance with the Standard for Claim Determinations. Paragraph (h) is new and addresses the relationship between determinations and successor-in-interest issues.

(Section) 618.824, covers agent and liable states. The definition for agent state and liable state are found in Subpart A; that's at 618.110. So this is a side-by-side of the responsibilities of the agent and liable state.

Paragraph (a) adds the requirement for liable states to provide Rapid Response and appropriate career services to a group of workers for whom a petition is filed. It specifies that career services established under other federal laws must also be made available to the group of workers, to the extent authorized by those laws.

In some instances, the liable state may seek assistance from one or more agent states in the provision of Rapid Response and appropriate career services, especially in situations where residency of the group of workers is divided into two or more states.

Paragraph (a) also covers information to workers and notifications, as well as requiring a liable state to provide lists of eligible TAA recipients and eligible RTAA recipients to the IRS. These lists are necessary for the IRS to determine who is potentially eligible to receive the Health Coverage Tax Credit.

Paragraph (b) contains new language regarding agent states and the provision of employment and case management services described in Subpart C. Paragraph (b) also contains new language referencing Subpart F, requiring agent states to secure and pay the costs of any approved training and subsistence and transportation payments, according to determinations issued by the liable state.

It also establishes that the agent state is responsible for the payment of job search and relocation benefits. Lastly, it adds language that requires agent states to assist in other activities and functions required by the Governor-Secretary Agreement, is modified to specify that this includes assisting in the review of petitions by verifying such information and providing other such assistance as the department may request.

In certain circumstances, especially when layoffs occur near a border between states, there may be multiple agent states. Workers may choose to access services at a One-Stop center closer to their residence rather than near their place of adversely-affected employment. This may result in there being multiple agent states involved in serving the same group of workers.

Paragraph (c), responsibilities under this section, clarifies that in most instances, the liable state and agent state are in fact the same state; and that, when this occurs, that state is responsible for all activities listed in this section.

Question. In paragraph (b)(7) of this section, which establishes responsibility for payment of job search and relocation allowances with the agent state, how should states respond when workers request the allowances before departing the liable state?

As mentioned in Subpart D, the department clarifies that there is only an agent state, other than the liable state, if the adversely-affected worker has accessed services outside of the worker's liable state. No agent state exists if the worker is simply seeking to travel to another state under a job search allowance or is relocating to another state. Until such time as the worker seeks services in another state, the liable state is both the liable and agent state.

(Section) 618.828 covers appeals and hearings. This is for determinations and redeterminations issued under the TAA program.

Paragraph (a) largely follows existing rules, but notes that there are exceptions to the general rule that the applicable state law applies to appeals of TAA determinations or redeterminations.

Paragraph (b), allegations of discrimination, clarifies that, as an exception to the general rule concerning appeals from paragraph (a), a complaint that a determination or redetermination under this part violates applicable federal nondiscrimination laws administered by the department, must be handled in accordance with the procedure of 29 CFR Parts 31, 32, 35, 36, and/or 38, as provided in 618.894. This clarification helps ensure that proper procedures are followed when a claimant alleges discrimination.

Paragraph (c), appeals promptness, must be decided with a degree of promptness.

Paragraph (d), retroactivity, is new and has no comparable counterpart in existing regulations or administrative guidance. It addresses the impact of a reversal of a denial of a training program. In the case of a determination or redetermination or decision reversing a training denial, the redetermination or decision must be given effect retroactively to the date of issuance of the determination that was subsequently reversed.

No costs of training may be paid unless such costs actually were incurred for training in which the individual participated. And no TRA may be paid with respect to any week during which the individual was not actively participating in the training.

MS. BAKER: Thank you, Tim. Moving on to overpayments and fraud. Section 618.832, concerning overpayments, fraud, and penalties for fraud, generally repeats 20 CFR 617.55, but also contains a few substantive differences.

Section 618.832 omits provisions on use of TAA program funds to offset other debt. Because of the importance the department places upon these provisions, Subpart H devotes a separate section to this issue at 618.836.

So paragraph (a) of 618.832 is on determinations and repayment. Paragraph (a)(1) updates the requirements based on the amended statute. The most significant change is that the decision to waive overpayments under certain conditions is now mandatory rather than optional. While the no-fault requirement remains, instead of an "equity and good conscience" standard, states must look to whether repayment would constitute a financial hardship.

And paragraph (a)(2) provides rules for the administration and interpretation of financial hardship for overpayment waiver purposes.

Paragraph (a)(3) requires that workers be provided a reasonable opportunity to demonstrate that they were without fault and are unable to repay their TAA program overpayments, and therefore are eligible for waivers of overpayments.

As a result of congressional action, the department has also changed the language related to financial hardship. A financial hardship exists where the funds would otherwise be needed to pay for ordinary and necessary living expenses, after taking into account the income and other resources reasonably available to the individual and their household. This is a significant change in operations.

Continuing on to paragraph (b), false representation or nondisclosure of material fact, it provides the statutory requirement for a lifetime disqualification from receipt of benefits under the act for anyone found to have knowingly provided a false representation or nondisclosure of material fact.

Paragraph (c), notice of determination, fair hearing, and finality, requires that prior to requiring repayment, a state or the department, as appropriate, must provide notice of the determination to the individual and an opportunity for a fair hearing. Only then, can a decision become final and repayment be required, unless a ruling has already been made by a court, in which case, that requirement has been met and repayment can be required.

Paragraph (d), training, job search and relocation allowances, and RTAA, provides instructions related to overpayments under training, job search and relocation allowances, and RTAA. Paragraph (d)(2) adds some further clarification providing that if worker fails to complete a training, job search, or relocation without good cause, the portion not completed is an overpayment, but that costs for the completed portions are not overpayments.

If, for example, a trade-affected worker completed three out of four semesters of an approved training program, and then did not complete the last semester without good cause, any payments made for the fourth semester would become overpayments under this Part 618.

Paragraph (d)(3) is new and establishes that a trade-affected worker has good cause if the worker acted diligently yet was unable to complete the training, job search, or relocation because of an exigent circumstance. The state must determine whether good cause exists on a worker-by-worker basis.

Paragraph (d)(4) provides that an overpayment must be recovered or waived as provided in this section.

And specifically about RTAA overpayments, paragraph (d)(5) has no corresponding provision in 20 CFR Part 617. It provides the rules for addressing overpayments under RTAA.

If a state has verified continued eligibility, then payments made after an adversely-affected worker's wages have changed that were correct and accurate at the time they were made, based on all the information available at that time, are considered payments to which the worker was entitled. Such payments are not overpayments, subject to 618.832.

And paragraph (e), overpayment recovery of TAA program funds by offset, concerns recovering an overpayment from the affected person's state UI entitlement and also adds some new provisions.

Because 20 CFR 617 contained no provision for cross-program offsets, paragraph (e)(2) adds language requiring overpayment recovery from state UI, as required by the Middle Class Tax Relief and Job Creations Act.

Paragraph (e)(3) limits recoveries from all types of UI to no more than 50 percent of each of the affected person's state or federal UI payments. However, since the act sets the 50 percent deduction as a ceiling, paragraph (e)(3) requires each state to follow its own law if its law provides for a lower limit.

Paragraph (f), fraud detection and prevention, changes the requirement that state procedures for detection and prevention of fraudulent TAA program overpayments be "commensurate with those" for UI to a requirement that state procedures to be "the same as" those for UI.

Paragraph (g), person, explains who is a "person" for purposes of this section and the next. Paragraph (g) explicitly includes a "training provider as well as the officers and officials thereof" and "a trade-affected worker or other individual."

The first of these changes closes a loophole that may have allowed officers and officials of training providers to avoid culpability and liability in instances of fraud and recovery of debts to the United States. The second change makes it clear that TAA program participants – trade-affected workers – and nonparticipants – other individuals – may also be found culpable and liable under the fraud and debt recovery portions of this rule.

Paragraph (h), criminal penalties, implements Section 244 of the act, establishing penalties for knowingly making a false statement, not disclosing a material fact, or causing others to do so. The penalties established by the act are imprisonment of not more than one year, a fine under Title 18 of the United States Code, or both.

Because these penalties are imprisonment or a fine under the federal criminal code, the department views the penalties as criminal sanctions rather than administrative penalties, which cannot be imposed absent the safeguards and higher standards of proof afforded criminal defendants. Suspected violations must be reported to the U.S. Department of Labor, Office of the Inspector General.

Question. How do states implement the overpayment provisions?

The answer to that is, the requirement for states to collect overpayments is not a new one. The language used in this rule is based on the statute and previous regulations at 20 CFR 617.55(c). Overpayments for training, RTAA, supplemental assistance, et cetera, are subject to the same requirements as TRA overpayments.

The approach in paragraph (b) of permanent ineligibility for benefits as a result of fraudulent receipt of program benefits seems overly aggressive, and wouldn't it exacerbate the economic harm suffered by workers?

So the department clarifies that where fraud was committed in relation to the TAA program, Section 243 of the act is clear that the trade-affected worker is no longer eligible for payments under the TAA program. The department explains that the lifetime ban on TAA program benefits is in the statute; and in 20 CFR 618.832(b) is only related to fraud committed under the act, not other instances of fraud under other state or federal statutes. And again, this is a statutory requirement.

20 CFR 618.832(d) provides that when a trade-affected worker fails to complete a TAA program approved training, job search, or relocation with good cause, any TAA program payment or portion of a payment to such worker is not an overpayment. Can the department provide examples of failed RTAA activities?

The department explains that in most states, the determination of good cause is determined through case law and previous adjudications under applicable state law. With regard to failed RTAA activities, the department provides examples such as the failure to provide the state with pay stubs or other required documentation to support continued eligibility and to ensure proper benefit payments.

Recovery of debts. Section 618.836 governs the use of TAA program benefits to offset debts that a benefit recipient owed to others.

So paragraph (a), debt due the United States, largely follows 20 CFR 617.55(h)(1) and adds RTAA. The authority for this requirement is the Debt Collection Act of 1982 and its implementing regulations in 29 CFR part 20.

And paragraph (b), debt due to others, makes a significant change from 20 CFR 617.55(h)(2). Paragraph (b) provides that TAA program benefits may only be used to recover debts owed to others to the same extent allowed under federal UI law. The department concluded that all TAA program benefits, which relate closely to TRA and RTAA, should follow the same rules for the offset of benefits as federal UI law, except as provided under paragraph (a).

OK. Over to you, Tim.

MR. THEBERGE: Thanks, Julie. So up next is 618.840. This is uniform interpretation. This is comparable to 618.52. There is reorganization and some substantive changes.

So there are two rules of construction, paragraph (a) and (b), the first and second rule of constructions, respectively, repeat the requirements from 617.52(a) and (b), except that they replace the references to the new part.

Congress stated in Section 288 of the act that "it is the sense of Congress that the department should apply the provisions of the act with the utmost regard for the interests of workers, firms, communities, and farmers petitioning for benefits." The department agrees with this goal and this Final Rule gives the utmost regard to those petitioning for benefits.

So the first rule, that the regulations to be construed liberally; and the second rule, that uniform interpretation be throughout the United States.

Paragraph (c), regarding the effectuating purposes and rules of construction, modifies the requirement that states automatically forward to the department a copy of each administrative decision rendered under the TAA program. Instead, states must submit administrative decisions only upon request by the department. The department has determined that this requirement was unduly burdensome.

There is one exception to this rule, expressed in paragraph (c)(1)(ii). The department will require states to submit to the department all decisions appealed to the state's highest UI administrative appeals authority, which is the highest level of administrative appeal. In some states, this body is known as the Board of Review, the Board of Appeals, Unemployment Insurance Commission, et cetera.

This process provides the department an opportunity to resolve issues before they become judicial actions. States are also encouraged to send to the department any other administrative decision that it determines is erroneous or contrary to the act, regulations, or administrative guidance. Note: When we say "send to the department," we mean send to your applicable regional office.

Paragraph (c)(1)(iii) applies to all state or federal court decisions and notices of pending state or federal court actions, requires all state and federal court decisions and notices to be sent to the department. This includes notices by a state or federal court of a hearing date or a court date, as well as all rulings related to the action.

Paragraphs (c)(2) through (6) set out the relationship between the department and the state with regard to determinations, redeterminations, and judicial proceedings under the act.

Paragraph (d), payment when due, retains the remaining provisions from 617.52(c)(3).

In short, uniform interpretation is where you tell us about stuff that's happening relative to determinations and appeals, and we get to weigh in as to whether we agree with you on those determinations and, if not, instruct you what to do to resolve them.

Section 618.844 is inviolate rights to Trade. This comes directly from 618.56. There is no change. The rights to the TAA program are protected in the same manner and same extent as UI. Individuals must be protected from discrimination and obstruction in the same manner and extent as under applicable state law to seek, apply for, and receive any TAA benefit or service.

Section 618.848 implements veterans' priority of service. Again, this is not new, but it's the first time it appears in the rule.

This section requires states to give priority for approval and funding of TAA program benefits and services to trade-affected workers meeting the requirements for veterans' priority of service. In particular, this priority would become effective if the TAA program has already allocated the full fiscal year funds for training and other activities, and states have exhausted a significant proportion of their available funds.

In that case, each state must give priority to veterans and to the specified categories of covered persons, over other trade-affected workers' applications for services, in approving and funding TaOA. This would also apply where there is limited capacity for a particular training program in an area.

Julie?

MS. BAKER: Thank you. Recordkeeping, 20 CFR 618.852, repeats the requirement in 20 CFR 617.57 concerning recordkeeping and disclosure of information, but it makes a few changes.

So paragraph (a), recordkeeping, has two changes. First, paragraph (a) omits references to reporting form ETA-563. This particular report is no longer required. Second, paragraph (a) adds that states are required to maintain records that contain any information the department determines to be appropriate in support of any reports the department may require.

Paragraph (a)(4) requires states to document that employment and case management services described in Subpart C were provided or offered to a participant. This is not a new requirement; however, this was not previously explicitly stated in regulation. And this Final Rule allows for paper-based or electronic case management systems, or a combination thereof. And all records must be available for review by the department.

Paragraph (b), disclosure of information, retains the requirements with regard to confidentiality requirements but reformats the section and adds a subordinate paragraph addressing information a state obtains in support of the department's investigation of a petition for certification of the eligibility of a group of workers.

Paragraph (b)(1) addresses confidentiality and the disclosure of personally-identifiable information, or PII. The language in paragraph (b) is consistent with the language in the Governor-Secretary Agreements with the states, which more broadly encompasses any state and federal confidentiality and disclosure requirements that might apply to TAA program information. To facilitate the provision of services, states should have workers sign a release of information document.

Paragraph (b)(2) notes that information obtained by the state for the department in support of an investigation under Subpart B must comply with the requirements in Subpart B of this regulation.

Paragraph (c), format of records and forms, is new and explicitly allows for the use of paper and electronic records or a combination thereof. This paragraph requires that regardless of the medium used, the records must be available for review for oversight purposes. This addition addresses the improvements in technology and means of transmitting, storing, and maintaining documents that have occurred since the publication of 20 CFR Part 617.

And paragraph (d), electronic signatures, is new. The Electronic Signatures in Global and National Commerce Act establishes that electronic contracts and electronic signatures have the same legal standing and enforcement as a traditional paper contract signed in ink.

Isn't requiring that program administrators retain files indefinitely needlessly burdensome?

So the department clarifies that there is no requirement for indefinite retention of records. Section 618.852 provides recordkeeping requirements to which states must adhere and states – I'm sorry, and it refers the states to uniform guidance at 2 CFR 200.333.

States must maintain records, as required, for three years, or as indicated at 2 CFR 200.333(a) through (f). And that's again, of the uniform guidance.

If a trade-affected worker applies for a training benefit after records are no longer available, the worker can be asked to supply information that will verify that he or she was part of a certified worker group. The documentation burden would then shift from the states to the worker.

Information, reports, and studies, Section 618.856, retains the language requiring states to submit such information and reports and conduct such studies as the department requires for TAA program purposes.

I'm going to leave this slide up for a moment so you can read a little bit more about information, reports, and studies. (Pause.) OK. Moving on.

General fiscal and administrative requirements. Over to you, Tim.

MR. THEBERGE: Thanks, Julie. So Section 618.860 is new. It contains general fiscal and administrative requirements applicable to state administration of the TAA program. It's modeled on WIOA regulations; it has significant differences.

(Section) 618.860 contains no requirements that states are not already required to meet. These requirements come from the act, from OMB guidance at 2 CFR Part 200, the department-specific regulations at 2 CFR 2900, and the department's administrative guidance and regulations. The department is including this section in Subpart H to highlight these requirements and improve compliance by states and other entities receiving TAA program funds.

States should consult the appropriate regional office for additional technical assistance related to the classification of costs under the TAA program or other requirements under this section.

Paragraph (a) is on uniform fiscal and administrative requirements. It requires compliance with the 2 CFR 200 and 2 CFR 2900.

Paragraph (a)(2) provides the period of expenditure for TAA program funds. This is no change. Funds are available in the year they are awarded and for two after.

Paragraph (a)(3) provides that equipment, described in 2 CFR 200.33, and computing devices, described in 2 CFR 200.20, includes equipment acquired with the TAA program funds under TAA program annual funding agreements.

This provision restates existing federal requirements and responds specifically to two situations observed in the states. First, in the case of a state's internal reorganization, any equipment purchased in prior years with TAA program funds must continue to be used for the TAA program. Second, paragraph (a)(3) makes clear that the provisions of 2 CFR 200.313 apply to equipment purchased under the TAA program.

Paragraph (a)(4) requires that the TAA program grant recipients apply the addition method to all program income earned under the TAA program grants.

Paragraph (b), administrative costs, provides guidance and a list on cost classification as administrative costs under the TAA program, as authorized by Section 235A of the act.

Although the language in this section is similar to WIOA, there is one significant difference. Under the TAA program, administrative costs do not automatically become program costs when expended at the subrecipient level. Costs for personnel and non-personnel must be properly allocated between program and administrative costs based on time worked or other equitable measures. Additional technical assistance will be provided on allowable costs, administrative costs, and cost allocation.

Paragraph (c), prior approval, provides that no prior approval is required for the purchase of equipment with TAA program funds. The department retains the prior approval requirement for capital expenditures and for capital assets, other than equipment.

Paragraph (d), audit and oversight, provides the audit and oversight and monitoring requirements applicable to states and other entities administering the TAA program under the uniform guidance.

Paragraph (e) describes and ensures compliance with government-wide debarment and suspension, and government-wide drug-free workplace requirements.

Paragraph (f), fiscal reporting requirements for states, establishes that states are required to report financial results on an accrual basis. This is not new. States must submit financial data on program activities, as specified in the reporting instructions.

Paragraph (f)(4) requires states to maintain sufficient records to obligate participant funds on at least a quarterly, but no less than fiscal year basis; and to periodically review obligations and de-obligate funds when a participant drops, completes, or is no longer eligible for training. States are encouraged to obligate and de-obligate funds on a semester-by-semester basis, when possible, to maximize the availability of funds.

There is actually a recent blog entry related to this exact process. You can find that on our TAA community website.

Paragraph (g), use of funds, provides the statutory limit and minimum for administrative and employment and case management costs, respectively. Administrative costs under the TAA program are limited to 10 percent of allotted funds under Section 235A of the act. The act also requires states to spend a minimum of five percent of funds allotted to them for employment and case management services described in Subpart C.

Compliance with the 10 percent maximum and 5 percent minimum will be monitored throughout the grant life cycle and enforced during the closeout process.

Paragraph (h), technology, is a new requirement. This paragraph requires states to maintain sufficient and effective technology solutions required for reporting and the provision of services to participants.

The department, based on its historical oversight of grantees, has found some MIS and information technology systems insufficient to allow the state to meet the requirements for "efficient and effective administration." This requirement ensures a grantee's ability to serve participants, provide required performance and service reports, and meet financial management and reporting obligations.

Related to that, paragraph (i), designation of resources for management information systems development, requires the states to dedicate an appropriate portion of TaOA funds for the development, maintenance, and upgrading of MIS. An appropriate portion must be allocated to maintain and continuously improve the state's MIS. This portion will vary by state based on MIS deployment and usage.

The department has concluded, based on oversight of the TAA program, that states have historically failed to adequately budget for MIS activity. This has resulted in outdated systems that present a risk to the ability of states to provide TAA program benefits to trade-affected workers and to provide the required performance and financial reports to the department.

Julie?

MS. BAKER: Great. Program performance, Section 618.864, contains TAA program performance requirements, as established by Section 239(j) of the act. The Final Rule uses the term "worker." This is taken directly from the Act. For purposes of 618.864, the term "worker" means a trade-affected worker.

Paragraph (a), general rule, requires states to report specified data on TAA program performance outcomes to the department, and requires a description of the efforts made to improve outcomes for workers under the TAA program. Specifically, states must report the primary indicators of performance identified in paragraph (b) of this section, which are very similar to those reported under WIOA.

We are going to cover paragraph (b) on the next slide, but I'll move on to paragraph (c), additional indicators.

The department and a state may agree upon additional indicators of performance for the TAA program, as appropriate.

Paragraph (d), use of wage records, requires states to use quarterly wage record information, as that term is defined in WIOA regulations at 20 CFR 677.175, in measuring progress on the primary indicators of performance and any additional measures established by the department.

Paragraph (e), reporting requirements, establishes performance reporting requirements for states. The department requires the use of the Participant Individual Record Layout, or PIRL. States use the PIRL to submit required reporting elements.

However, paragraph (e) recognizes that the department in the future might require reports that supersede or supplement this report. Paragraph (e) also requires the verification or validation of reports as accurate.

Now moving back a little bit to paragraph (b). Paragraph (b)(1) identifies the primary indicators of performance. These are from the act and are very similar to those established under WIOA. However, in addition to reporting on the percentage of workers as WIOA does, the indicators also include a requirement to report on the number of workers who have achieved the indicator.

In addition, unlike the WIOA programs, the TAA program is not subject to the measure on effectiveness of serving employers.

Paragraph (b)(2) relates to the credential attainment indicator and provides that, under the act, workers who received benefits under the TAA program and obtained a secondary school diploma or its recognized equivalent are only included in this indicator if they also obtained employment, or are in an education or training program leading to a recognized postsecondary credential within one year after exit from the program.

Paragraph (f), publication of performance results, provides that the department will publish the states' TAA program performance annually in the form of a TAA annual report. And you can find those on our website. Program performance information is provided at the national and state level.

Paragraph (g) implements the control measures required by Section 239(i) which requires states to have a formal monitoring program in place that includes the review of participant case files on a regular basis.

Section 239(i)(2) of the act defines control measures as measures that are internal to a system used by a state to collect data and are designed to ensure accuracy and verifiability of such data.

Paragraph (g)(1) implements the control measures. Paragraph (g)(2) describes that systems must be internal to the state.

Paragraph (g)(3) explains the purpose of the control measures and sets out a number of requirements. It codifies the Trade Adjustment Assistance Data Integrity review process used by the department to verify and validate the data reported by the states in accordance with TEGL number 04-14 and any subsequent changes.

Paragraph (g)(4) requires states to implement a formal monitoring. The requirement to conduct program monitoring is not new. In addition to the requirement in the uniform guidance to conduct monitoring, administrative guidance established such a requirement. The monitoring program must be designed to identify and share promising state practices, identify and correct deficiencies, and identify and address staff training needs.

A minimum quarterly random sample of 20 cases must be reviewed and must include at least two certifications issued under Subpart B. The four quarterly samples within a calendar year should also cover at least four different geographic areas of the state administering the program.

The department recognizes that in some states, it may be difficult to meet these requirements based on enrollment levels and the geographic distribution of certifications. If circumstances preclude a state from meeting these criteria, the state must contact their appropriate ETA regional office to design a monitoring program that better suits the TAA program in that state, and make sure it is sufficient to ensure the accuracy and verifiability of such data.

And paragraph (h), data on benefits received, training, outcomes, Rapid Response activities, and spending, implements Section 249B(b) of the Act, which requires collection and reporting of specific information, including demographics, services received, program duration, and cost information.

MR. THEBERGE: All right. Up next is unemployment insurance. This is 618.868, which retains the language from 617.58, but changes the reference from 617 to 618.

This provision ensures that UI benefits are not denied or reduced by receipt of payment of TAA benefits.

(Section) 618.868 – that's funny. I messed up the reference, didn't I? So this is 618.868, I believe, carries forward the Federal Travel Regulations from 41 CFR chapters 300 through 304, and the policies of the department, as the standard for state-provided travel, subsistence, and transportation benefits to TAA program participants. This is not a new policy.

So the department already enforces this requirement under existing rules by ensuring the uniform interpretation of the rule. This Final Rule makes it clear that TAA program participants travel under the same rules as employees of the department, allowing for consistent treatment of participants regardless of their location within the United States.

MS. BAKER: All right. Moving on to verification of eligibility. This is Section 618.876. It implements the requirements at Section 239(k) of the act for states to verify a participant is in satisfactory immigration status.

Section 239(k) of the act directs states to use the immigration status verification system in 42 U.S.C. 1320b-7(d) for purposes of re-establishing a worker's eligibility for unemployment compensation. The department has historically interpreted this verification requirement for the TAA program to require participants to meet the requirements for eligibility under UI, including the requirement that the participant be authorized to work in the United States.

This is because UI eligibility is a requirement of TRA, and training can be approved only where there is a reasonable expectation of employment following completion of training. Without authorization to work in the United States, there can be no reasonable expectation of employment following completion of training.

So immigration status verification under the TAA program is defined by WIOA and the eligibility requirements of the TAA program.

Paragraph (a) explains that individuals must be authorized to work in the United States to receive benefits under the TAA program. States are required to verify the status of participants who are not a citizen or national of the United States.

As paragraph (b) explains, for participants who obtained UI, the act considers the initial verification required by Section 239(k) of the act to have been completed through use of the Systematic Alien Verification for Entitlement – or SAVE – program maintained by the United States Customs and Immigration Service at the time eligibility for UI benefits was determined.

The state is not required to re-verify the participant's immigration status unless the documentation used during the initial verification is set to expire during the period the participant is eligible to receive TAA benefits.

Paragraph (c) requires the state to redetermine periodically the eligibility of a noncitizen or national to ensure their continued satisfactory immigration status. The timing of the redetermination is based on the expiration date of materials used during the initial verification process and reverification must be done before the individual's status expires.

Is verification of eligibility for program benefits the responsibility of the liable state or the agent state?

So verification is the responsibility of the liable state, which is the state in which the trade-affected worker establishes UI eligibility until such worker establishes eligibility in another state. If the worker is receiving services in the agent state, the agent state assists the liable state in the verification. Agent states should contact liable states, and vice versa, to confirm that an initial verification was conducted.

Special rule for military service in Section 618.884 codifies the special rule with regard to military service established in Section 233(i) of the act.

Paragraph (a) provides that a state may waive any requirement of this part that the state determines is necessary to ensure that an adversely-affected worker who is a member of a reserve component of the Armed Forces, and serves a period of duty described in paragraph (a)(2), is eligible to receive TRA, training, and other benefits under this part in the same manner and to the same extent as if the worker had not served the period of duty.

Paragraph (b) defines period of duty for various classes of military service. And although the act uses the phrase "may waive," the department strongly encourages states to apply this rule broadly to provide service members the most flexible access to the TAA program allowed by law.

Equitable tolling, 20 CFR 618.888, originates from administrative guidance and case law. It clarifies that the TAA program deadlines may be equitably tolled and provides the limited circumstances under which equitable tolling may be available.

Paragraph (a) establishes a uniform test for determining when equitable tolling is available.

And paragraph (b) sets out a burden-shifting framework for equitable tolling in one unique circumstance, when the state fails to give required notice to a worker of a particular benefit – or potential benefit – and so the deadline for that benefit – or potential benefit – runs without the worker's knowledge. This circumstance only applies when the particular notice is one expressly required by this Final Rule.

If a worker alleges that the state failed to give such required notice, the state can rebut that evidence definitively by showing that the worker received actual notice by other means.

Paragraph (b) acts to emphasize to states the importance of complying with the notice requirements in this Part 618. It should not be construed to otherwise lessen or lighten a worker's burden to show entitlement to equitable tolling in other circumstances.

Paragraph (c) explains that a deadline equitably tolled is tolled for as long as the extraordinary circumstance preventing timely filing exists. Once the extraordinary circumstance is removed, then the deadline clock begins ticking again.

And finally, paragraph (d) sets a limit on how long a deadline may be equitably tolled – 36 months. This is new. The 36-month limit strikes a balance between, on the one hand, fairness and equity for the individual workers and, on the other, the need for clarity and efficiency in the operation of the program as a whole.

So under what circumstances could a state toll a deadline for 36 months?

The answer is, in creating the maximum extension period, the department seeks both to allow claimants who were prevented from timely filing for TAA program benefits due to extraordinary circumstances ample time to file, and to ensure that the information states require to administer the TAA Program is still attainable following the passage of time.

For example, where a trade-affected worker has not received notice of eligibility, the department maintains that 36 months is a more than sufficient period of time for a reasonably diligent worker to discover his or her eligibility and apply for benefits. The department has determined that, where equitable tolling of a deadline is applicable, a 36-month maximum extension period is a reasonable limit.

OK. Over to you, Tim.

MR. THEBERGE: Thanks, Julie. So 618.890, staffing flexibility, amends the current rule at the same section to clarify that only certain activities under the TAA program need to be performed by staff covered by a system meeting federal merit personnel criteria, regardless of whether they are funded by the TAA program. This is a significant change.

The changes give states the freedom to staff employment case management services in the most effective and efficient way, using a combination of state employees, local government employees, contracted services, and other staffing models in the way that makes the most sense for them.

This allows states to provide these services in a more seamless manner, along with other programs collocated at the American Job Centers. WIOA envisions an integrated workforce development system that provides streamlined service delivery of the WIOA partner programs, including the TAA program.

States and local areas have discretion in how to staff the provision of WIOA programs and services, and they have adopted a variety of staffing approaches, local-area staff, contractors, and state employees.

Some staffing requirements remain. Paragraph (a) provides that the merit staff provisions of the Social Security Act apply to the appeals process under applicable state law. This is required by the act at Section 239(e) and also comports with the staffing requirements for state unemployment insurance offices.

Paragraph (b) requires that all determinations on eligibility must be made by state staff, with the exception of the functions in paragraph (a), which must be carried out by merit staff. This means that state or state merit staff must render all determinations under the act. It must also ensure access to the appeals process under the applicable state law.

Paragraph (c) explains that all other functions under the TAA program may be carried out using a variety of staffing models. Those models could include state staff under a merit-personnel system, other state staff, local providers, One-Stop partners, or a combination of these solutions.

This means that TAA program funding may be used to pay for employment and case management services rendered by state merit staff, state staff, and non-state staff, such as local providers, One-Stop partners, and so on.

This change allows states to implement a seamless service delivery model where a trade-affected worker will not need to move from case manager to case manager depending on their merit staff status. Cost allocation of employment and case management services costs will also be simpler as the merit staff status of case managers will be irrelevant for time-charging.

The department is not mandating that states change their staffing models, much less mandating privatization. In fact, many of the local area providers of WIOA services are municipal and county employees, not private-sector employees, and they would presumably remain so if under the flexibilities provided by this rule. Where states have found that retaining federal staffing criteria is the best approach for service delivery, they need not change that approach.

At times the department has found merit staffing requirements impede surge capacity. Beginning during the Great Recession, many governors established hiring freezes at the state level, even if the positions were federally funded. This left many states understaffed and unable to respond to large dislocation events, especially in rural areas. This Final Rule provides states with additional flexibility to meet the needs of trade-affected workers.

Lastly, the department has found that the combination of the changes to the merit staffing provisions and to the requirement to co-enroll trade-affected workers in WIOA represent one of the most significant steps towards service integration since the original development of the One-Stop service delivery model.

WIOA providers are not accustomed to processing appeals regarding a government service and WIOA providers have greater discretion in granting benefits. Can you clarify this in relation to appeals?

The department clarifies that this Final Rule makes no changes to the handling of appeals. All appeals under the TAA program are subject to the same process utilized for appeals under the UI program, which has merit staffing requirements.

Would all determinations regarding program benefits need to be approved by the state merit staff only, or by any state staff?

(Section) 618.890(b) provides that determinations in the TAA program can be made by either state merit staff or non-merit state staff, subject to the restriction regarding redeterminations. States must ensure that whatever model is utilized allows access to the UI appeals process in their state.

(Section) 618.894 addresses the applicability of nondiscrimination and equal opportunity requirements. These are contained in 29 CFR 31, 32, 35, 36, and 38. We're not going to cover this in detail. You should already be familiar with these under the other programs. We added to this to the Trade rule to make it compliant with the rest of the department's rules.

(Section) 618.898 covers applicable state law. The term "applicable state law" is defined at Subpart A rather than in this section. The separate paragraph addressing workers entitled to UI under the Railroad Unemployment Insurance Act has also been removed because it was incorporated into the definition of "applicable State law."

With that, we have reached the end of our presentation for today. We have a couple of minutes left. If you have any remaining questions, please enter them into the chat and we will try to get to those before we end today's session. We understand there is a lot in here. Some of it is new. Some of it is not.

We do have resources available for you. Notably, the TAA community that's here on WorkforceGPS at taa.workforcegps.org. I encourage you all to join the community if you have not already. There are blogs. There are peer resources. There are these webinars and other similar resources available to you.

The TAA program website; this is our official website. Note that the address has recently changed. The U.S. Code version of the act is available as well, along with a copy of the Final Rule.

Sure. We have a question that I will take that just came in. The question is, "Can non-state staff charge to admin or only case management funds?" They can charge to either, so long as the activity they are doing fits under one of those categories. The act – sorry, the regulation, although directed primarily at employment and case management services, does not say that administrative costs can't also be charged for non-merit staff. So again, admin or case management is fine. Just make sure you're allocating those costs correctly.

We do have one more session for you. That is on Friday. That is Subpart I. That will end phase one of our training. We are already working on phase two of this training, which will include presentations from your peers on successes that they've found under various parts of the Trade program.

If you have questions we did not get to today, or if you have questions as you're thinking about this later or over the next few weeks as we implement this program, please send those to our inbox at regulations.taa@dol.gov. We have a team of staff standing by to get to your questions. We usually will get back to you in a day, maybe two, depending on the complexities involved in your question.

Let's see. I think we've covered all of the questions that have come in thus far, or in the process of doing so. So I will say thank you. I will leave up the slide with the email address for you to submit any remaining questions. And I will turn it back over to Grace.

(END)