2011 DRAFTING REQUEST

Bill

Received: **04/20/2011**

Received By: **jkuesel**

Wanted: **As time permits**

Companion to LRB:

For: **Mark Miller (608) 266-9170**

By/Representing: **Tim Casper**

May Contact: **Dan LaRocque - DWD**

Drafter: **jkuesel**

Subject: **Unemployment Insurance**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Miller@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Extended benefit "on" indicator

Instructions:

Per attached E mail, 4/20/11.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	jkuesel 04/26/2011	csicilia 04/26/2011		_______ _______			S&L
/1	jkuesel 06/15/2011		mduchek 04/26/2011	_______ _______	lparisi 04/26/2011	ggodwin 06/29/2011	

FE Sent For:

at intro 7-5-11

<END>

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/? /1	jkuesel 4/26/11	/1 cjs	4/26/11				

FE Sent For:

<END>

Kuesel, Jeffery

From: Casper, Tim
Sent: Wednesday, April 20, 2011 11:34 AM
To: Kuesel, Jeffery
Subject: FW: Extended Benefit Trigger Option

Importance: High

Attachments: D11-01 Amend Triggers for Extended Benefits - Summary 021011.doc; D11-01 Amend Triggers for Extended Benefits draft 021011a.doc

Per ourconversation, below is the necessary information to draft the bill.

From: Browne, Michael
Sent: Wednesday, April 20, 2011 11:23 AM
To: Casper, Tim
Subject: FW: Extended Benefit Trigger Option
Importance: High

From: Moran, Sean
Sent: Wednesday, April 06, 2011 4:04 PM
To: Browne, Michael
Subject: FW: Extended Benefit Trigger Option
Importance: High

Michael,

At your request, I am forwarding you the attachments below regarding the Department of Workforce Development's analysis of potential legislative changes that would result in an extension of the 100% federally funded 13 weeks of extended benefits, which would otherwise expire on April 16, 2011.

I hope this information responds to your request, please contact me with any further questions.

Sean P. Moran, Fiscal Analyst
Wisconsin Legislative Fiscal Bureau
One East Main St., Suite 301
Madison, WI 53703

Phone: 608-266-3847
Fax: 608-267-6873
Email: Sean.Moran@legis.wisconsin.gov

From: Reid, Andrea - DWD [mailto:Andrea.Reid@dwd.wisconsin.gov]
Sent: Wednesday, April 06, 2011 1:48 PM
To: Moran, Sean
Subject: Extended Benefit Trigger Option
Importance: High

Amend Triggers for Extended Benefits

D11-01 Amend Triggers for Exte... D11-01 Amend Triggers for Exte...

Amend Triggers for Extended Benefits: Summary

Recent Federal legislation, the Tax Relief Act of 2010, affected unemployment insurance programs by:

- extending the Emergency Unemployment Compensation (EUC) through 2011;
- extending federal funding of the 1970 Extended Benefits (EB) program through January 4, 2012; and
- creating the opportunity for each state to adopt new EB "triggers".

While no state statutory changes are necessary to assure EUC payments in 2011, if Wisconsin is to implement the new EB Trigger, state legislation would be needed.

Triggers are threshold rates of unemployment that determine the period of time during which the EB program will be open in the state for benefits for eligible claimants.

Current law compares current state rates of unemployment to rates in the previous two years to determine whether the EB period ends. If the current unemployment rate is at or above 110% of either of the last two years' rates, the EB period remains in effect. **Without new legislation, the Department projects that EB benefits in Wisconsin will end in April or May 2011,** because current unemployment rates have been declining relative to the rates in the last two years.

The 2010 federal law allows the state to compare rates three years prior to the current year (the "three-year look back"). If Wisconsin were to enact the three year look back, the Department projects that the EB period would remain open for Wisconsin claimants of EB benefits for a limited time, through the earlier of:

- January 4, 2012 (the remaining period of 100% federal funding); or
- any month in 2011 in which the EB period closes because the triggering unemployment rates drop below the new statutory trigger levels.

If enacted, workers who have exhausted regular UI benefits (26 weeks) and all EUC benefits (47 weeks) may claim EB benefits while an EB period is open. Eligible claimants receive up to 13 weeks, the maximum EB benefit amount during an EB period.

Anticipated Impact:

Without the addition of the three-year look back, the Department projects that the EB program will end in April or May. **Chart 1** below shows the projected three month rolling TUR, and the two- and three-year look back ratios versus the 110% trigger. **Chart 2** shows projected EB payments through 2011 under each statutory scenario.

EB benefits are federally funded through 2011, except that EB benefits are charged to state and local governments and federally-recognized Indian tribes. Estimated EB payments by government and tribal employers of $1,094,986, including an estimated impact on the Reserve Fund of $97,015, in the projected EB period that would result from a three-year look back are displayed on **Chart 3**.

Chart 1:

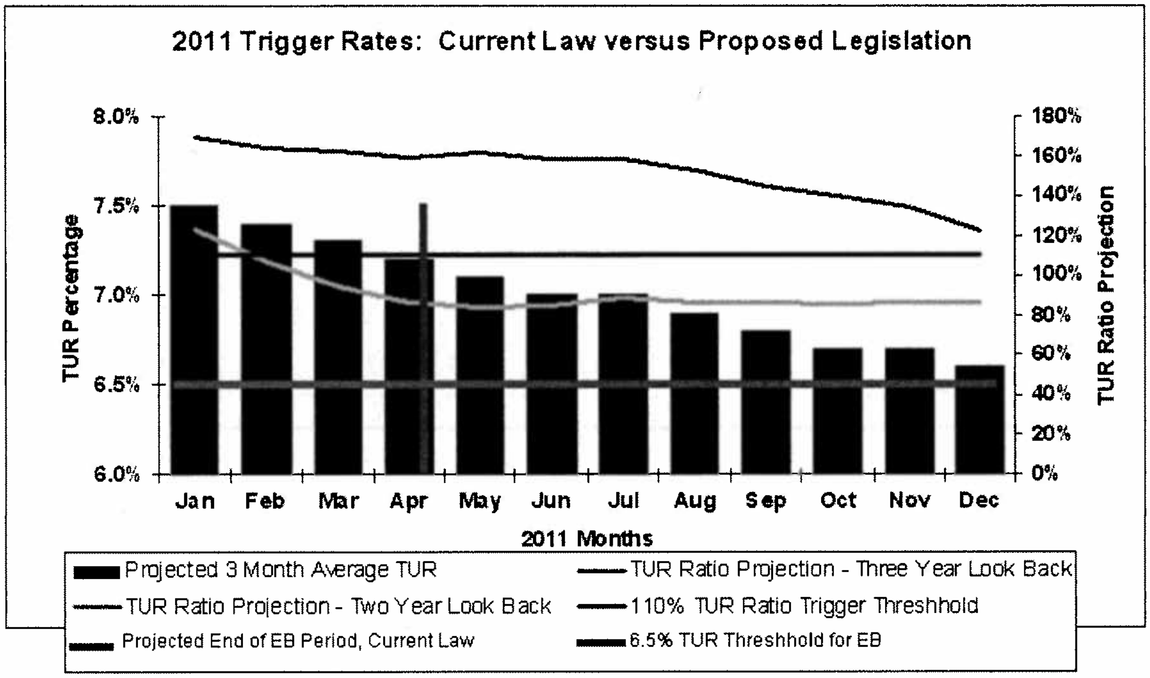

Chart 2:

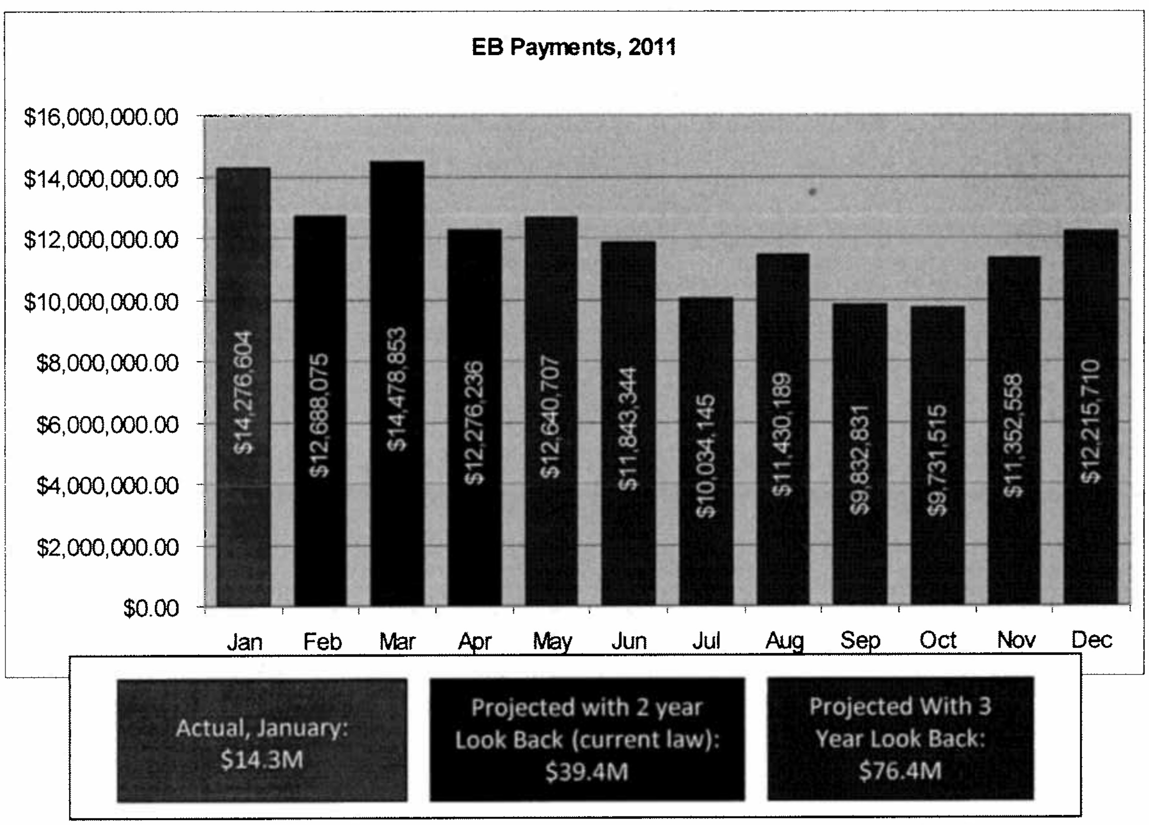

Chart 3:

EB Payments May - Dec 2011 (estimated)	Contributing[1]	Reimbursable[2]	Total
Governmental Employers	$43,111	$803,856	$846,967
Indian Tribes	53,904	194,114	248,018
Total	$97,015	$997,970	$1,094,986

[1] Charges to contributing employers would be paid from the Reserve Fund.

[2] Charges to reimbursable employers would not affect Reserve Fund. Reimbursable employers would be billed.

Amend Triggers for Extended Benefits

Date: February 10, 2011
Prepared by: Dan LaRocque and Ben Peirce

ANALYSIS OF AMENDMENT

1. Description of Potential Change

In December 2010, the Tax Relief Act of 2010 extended federal funding of EB through January 4, 2012. The same federal law created a new statutory trigger for turning on and turning off EB. The new trigger is called the "three-year look back".

The Council may wish to consider whether Wisconsin should legislatively adopt the three-year look back trigger. Such legislation would allow the EB period to remain open for Wisconsin claimants of EB benefits for a limited time. The EB period would continue during the remaining period of 100% federal funding of EB. Such legislation would allow EB to continue through January 4, 2012, or through any month in 2011 that the EB period closes because the triggering unemployment rates drop below the statutory trigger levels.

Without the proposed state legislation, EB benefits in Wisconsin will end in April or May 2011 due to declining unemployment rates. If the three-year look back is legislatively adopted, workers who have exhausted regular UI and Emergency Unemployment Compensation benefits will be able to claim EB benefits for up to 13 weeks, the maximum individual benefit amount during an EB period. All EB benefits in 2011 and those resulting from this proposed amendment are funded fully by the federal government.

2. Background on Extended Benefits.

The EB program was created in 1970 by the federal government to fund benefits for workers who had exhausted regular unemployment benefits during periods of particularly high unemployment. (Federal-State Extended Unemployment Compensation Act of 1970). EB is ordinarily funded 50% by the state and 50% by the federal government. Since February 2009, the federal government has paid 100% of EB and made other modifications to the EB program.

Federal legislation (the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 or P.L. 111-312) enacted in December 2010 extended the Emergency Unemployment Compensation (EUC) program through 2011; extended federal funding of the 1970 Extended Benefits (EB) program; and created new provisions for states to insert in their EB statutes certain prescribed threshold rates of unemployment ("triggers") that determine the period of time during which the EB program will be open for benefits to the state's eligible claimants.

Insertion of the new trigger provisions into the Wisconsin's EB statute, as recently authorized by P.L. 111-312, would allow Wisconsin, during 2011, to continue paying eligible Wisconsin workers EB benefits after the EB period would otherwise have ended. The EB benefit period will continue for so long as the state's rates of unemployment continue to satisfy at least one set of the various trigger levels.

The terms of the IUR and TUR triggers require a comparison of current rates of unemployment to rates in the prior 2 years to determine whether an EB period is on. The amendment would allow the state to "look back" three years rather than just 2 years to make the determination.

The result would be that Wisconsin's EB period, which is likely to end by early April or May 2011, will continue for some period in 2011 or to January 4, 2012.

The federal law provides states with federal funding of most EB claims payments until 2012 or until the state's EB period ends, whichever is sooner. No further legislation is necessary to assure that funding is provided entirely by federal sources during 2011.

Such an amendment to the Wisconsin EB statute, as in the current Wisconsin law, would provide that the new triggers would remain in effect for a period of time that is tailored to the period of full federal funding or any further extensions of such funding. When federal funding ends, the three-year look back trigger will dissolve, or sunset, by operation of the statute without further action or legislation.

4. <u>Background on EB Period and Triggers that Begin and End an EB Period</u>

The EB program is a permanent federal-state program that provides benefits to claimants who have exhausted their regular UI benefits during periods of high unemployment. The "extended benefit period" or "EB period" is the period during which eligible EB claimants may be paid EB benefits. Federal law prescribes certain mandatory "on" and "off" indicators (triggers) that determine when EB periods begin and end and certain optional triggers that allow benefits to continue by allowing the EB period to continue after a point at which the mandatory trigger would have otherwise caused the EB period to end.

Federal law mandates one trigger and affords certain optional triggers that states are permitted but not required to enact.

Mandatory trigger: State law must trigger *on* an EB period when the insured unemployment rate (IUR) for the previous 13 weeks is at least 5% and is 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years. Wisconsin met this trigger in week 6 of 2009; and, as a result, the 2009 EB period began in week 9 of 2009.

Optional 6% IUR trigger: A state is permitted to trigger on an EB period when the IUR for the previous 13 weeks is at least 6% without regard to the "120%" trigger. If adopted, the 6% provision allows EB to trigger on when a state's IUR has surpassed 5% but *too gradually* to satisfy the 120% trigger. Wisconsin adopted this EB trigger in 1981.

Optional TUR Trigger. Since March 1993, states also have had the option to adopt an additional trigger provision. This provision triggers on an EB period when the average seasonally adjusted total unemployment rate (TUR) for the previous 3 months is 6.5% or greater and the average TUR for the 3-month period is 110% or greater of the average for the corresponding 3 month period in the previous 2 years. This allows a state to trigger on EB or EB to remain triggered on when the IUR has declined below trigger levels but the TUR is still relatively high.

"High EB" benefits during "High Unemployment Period": In states that adopt the optional 6.5% TUR trigger, claimants may receive up to an additional 7 weeks of benefits in periods of especially high unemployment (above a seasonally adjusted state TUR of 8% for the most recent 3 months). Wisconsin adopted this trigger by 2009 Wisconsin Act 11 (adding Wis. Stat. s.108.141(1)(f)3.), which inserted the 6.5% TUR trigger for 13 weeks of EB benefits 8% TUR

trigger for 7 weeks of High EB benefits. These triggers remain in effect for so long as 100% federal funding continues and federal law otherwise permits.

Under the federal governing the original EB program, the federal government affords no payment of EB benefits for the first week of eligibility in a state without a waiting week.

As a result of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) and subsequent amendments, including December 2010 legislation, P.L. 111-312, ***for so long as an EB period is open,*** for claimants who first claim EB before January 4, 2012, and for those claimants who also file EB claims through June 11, 2012:

(1) the federal government pays 100% of the EB benefits for most claimants;

(2) claimants whose benefit year ends before the required exhaustion of regular and emergency benefits occurs, if otherwise qualified and during an EB period, will be eligible for EB; and

(3) a federal law provision that denied federal funding of EB payments to claimants in the first week of unemployment if the state did not have a waiting week is suspended.

As a result of P.L. 111-312, states are permitted to insert triggers to state laws that allow an EB period to continue under circumstances where the triggers otherwise would cause the EB period not to begin or to end. Consistent with P.L. 111-312, such legislation would amend the current state statutory IUR trigger provision (mandatory provision) and TUR trigger provision. The amended provision would determine an EB period by comparing the current IUR and TUR to rates of comparable periods 3 years ago, rather than comparing them only to the rates of the two more recent years. The amendments would be temporary, meaning that the amendments to state law on EB by their terms would be limited to the period of 100% federal funding.

4. <u>Statutory amendment:</u>

Wis. Stat. §108.141(1)(f) is amended to read as follows:

(f) There is a Wisconsin "on" indicator for a week if:
1. The rate of insured unemployment for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and equaled or exceeded 5 percent; or
2. The rate of insured unemployment for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 6 percent, regardless of the rate of insured unemployment in the 2 preceding calendar years; or
3. With respect to weeks of unemployment beginning on or after February 17, 2009, and ending with the week ending 3 weeks prior to the last week in which federal sharing is authorized by section 2005 (a) of P.L. 111-5 and any amendments thereto:
a. The average rate of total unemployment, seasonally adjusted, as determined by the U.S. secretary of labor, for the

period consisting of the most recent 3 months for which data for
all states are published before the close of that week equals or
exceeds 6.5 percent; and
b. The average rate of total unemployment in this state, seasonally
adjusted, as determined by the U.S. secretary of labor for
the period consisting of the most recent 3 months for which data
for all states are published before the close of that week equals or
exceeds 110 percent of the average for either or both of the corresponding
3–month periods ending in the 2 preceding calendar
years; or
4. With respect to weeks of unemployment beginning on or
after the date of enactment of P.L. 111-312, and ending with the week ending 4 weeks
prior to the last week in which federal sharing is authorized by section
2005 (a) of P.L. 111–5 and any amendments thereto:
a. The rate of insured unemployment for the period consisting
of that week and the immediately preceding 12 weeks equaled or
exceeded 120 percent of the average of such rates for the corresponding
13–week period ending in each of the preceding 3 calendar
years, and equaled or exceeded 5 percent; or
b. The average rate of total unemployment, seasonally
adjusted, as determined by the U.S. secretary of labor, for the
period consisting of the most recent 3 months for which data for
all states are published before the close of that week equals or
exceeds 6.5 percent; and equals or exceeds 110 percent of the average
for either or both of the corresponding 3–month periods ending in the
3 preceding calendar years.

5. Effects of the Change

a. Policy: The change does not affect department policy.

b. Administrative Feasibility: Systems currently configured to pay EB benefits would require no significant changes.

d. Fiscal: The impact of the amendment will depend on the length of time that the EB period is open for claims and the level of participation by eligible claimants. The department projects that the amendment will cause the EB period to be open from May through December and that the resulting payments to claimants would be approximately $76.4 millon. EB benefits are federally funded through 2011, except that EB benefits are charged to state and local governments and federally-recognized Indian tribes. The department estimates EB payments by government and tribal employers will be approximately $1,094,986, including an estimated impact on the Reserve Fund of $97,015, in the projected EB period that would result from a three-year look back. The impact on the employers that are not recipients of federal funding is summarized as follows:

EB Payments May - Dec 2011 (estimated)	Contributing [1]	Reimbursable [2]	Total
Governmental Employers	$43,111	$803,856	$846,967
Indian Tribes	53,904	194,114	248,018
Total	$97,015	$997,970	$1,094,986

[1] Charges to contributing employers would be paid from the Reserve Fund.

[2] Charges to reimbursable employers would not affect Reserve Fund. Reimbursable employers would be billed.

6. State and Federal Issues

The change is enabled by federal law and consistent with guidance regarding the EB program afforded by the United States Department of Labor.

7. Effective/Applicability Date

The bill would be made effective as of the date of P.L. 111-312, December 17, 2010, or on any date in 2011 prior to the end of the current EB period. The consequences would be the same regardless of which of the two dates is the effective date. Either date would assure continuity of EB benefits while Wisconsin remains in an EB period under one or more the various sets of triggers.

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Extended Benefits and EUC CORRESPONDENCE SYMBOL OUI/DL DATE December 23, 2010

ADVISORY: **UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 04-10, Change 7**

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Extended Benefits Program – Temporary Changes made by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, and Reminder of the Continuation of the Emergency Unemployment Compensation Nonreduction Rule

1. **Purpose**. To provide additional information about the temporary changes to the federal-state extended benefits (EB) program made by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, and remind states of the continuation of the Emergency Unemployment Compensation (EUC08) nonreduction rule.

2. **References**. Sections 501 and 502 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312; the Federal-State Extended Unemployment Compensation Act of 1970 ("EB law"), 26 U.S.C. 3304 note; 26 U.S.C. 3304(a)(11); 20 CFR Part 615; Unemployment Insurance Program Letter (UIPL) No. 45-92; UIPL No. 4-10, changes 3 and 6; UIPL No. 24-10; and Employment and Training Administration (ETA) 539 Report (OMB number 1205-0028).

3. **Summary of EB Changes**. P.L. 111-312 permits states to amend their laws to temporarily modify the provisions concerning EB "on" and "off" indicators. Specifically, it permits states to make determinations of whether there is an EB "on" or "off" indicator by comparing current unemployment rates to the unemployment rates for the corresponding period in the three preceding years. This comparison is called a "look-back". (Under permanent EB law, the look-back compares current unemployment rates to rates in the previous two years.) This modification to the look-back provisions will enable many states to remain "on" EB much longer. This authority expires on December 31, 2011. This UIPL provides:

RESCISSIONS	EXPIRATION DATE
None	Continuing

- Additional information about this optional temporary change to the EB program.
- Draft legislation that states may use when enacting legislation to implement it.
- Revised reporting instructions for the ETA 539.

4. **EB Background**. Permanent EB law establishes "on" or "off" indicators to determine when EB periods begin and end in a state. To ensure that EB is only payable during periods of high and rising unemployment, both the mandatory indicator based on the insured unemployment rate (IUR) and the optional indicator based on the total unemployment rate (TUR) include look-back requirements. Under the mandatory IUR indicator (section 203(d) of the EB law), a state will begin and remain in an EB period (under which up to 13 weeks of EB is available) if the IUR for the previous 13 weeks is at least 5 percent and equals or exceeds 120 percent of the average of the rates for the corresponding period in each of the two previous years. Under the optional TUR indicator (section 203(f) of the EB law), a state will begin and remain in an EB period (under which up to 13 weeks of EB is available) if the average seasonally adjusted TUR for the most recent three months is at least 6.5 percent and equals or exceeds 110 percent of the rate for the corresponding three-month period in either or both of the two previous years. Additionally, under the optional TUR indicator, a state will begin and remain in a high unemployment period (section 202(b)(3)(B) of the EB law)(under which up to 20 total weeks of EB is available) if the TUR is at least 8.0 percent and equals or exceeds 110 percent of the rate for the corresponding 3-month period in either or both of the two previous years.

   Under permanent EB law, because of sustained high unemployment rates during the last two years, many states are expected to trigger "off" EB based on the TUR indicator by early spring 2011. Even though states' TURs are expected to remain high enough to continue to meet the first requirement of an EB "on indicator" (i.e., a TUR of at least 6.5 percent), they would not likely continue to meet the look-back requirement because the average seasonally adjusted TUR for the most recent three months would no longer equal or exceed 110 percent of the rate for the corresponding three-month period in either or both of the two previous years.

   To enable states to remain "on" EB, section 502 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 amends the EB law to permit states to use a three-year look-back for the mandatory IUR and/or optional TUR indicator. (In general, unemployment rates three years ago were low enough to meet the look-back requirements for the EB "on" indicators.) This optional authority applies only to weeks of unemployment beginning after December 17, 2010, through weeks of unemployment ending on or before December 31, 2011. Since EB is payable under state law, states must amend the EB provisions in their laws to apply the three-year look-back when determining EB "on" or "off" indicators. States that want to use the three-year look-back should ensure this provision is effective before they would trigger "off" EB based on the two-year look-back. Otherwise, the state must remain "off" EB for at least 13 weeks, as required by section 203(b)(1)(B) of the EB law.

Attachment I offers draft legislation for the convenience of states wishing to adopt the temporary three-year look-back.

5. **EB Reporting**. States that adopt the three-year look-back provision for the IUR indicator will need to modify the reporting of the ETA 539 to reflect the actual number of prior years used in the calculation of the look-back percentage. Current guidance for the ETA 539 only allows for two years in the computation of the average rate in prior years, referred to as "AR" and defined on page I-1-14 of current reporting guidance. Revised guidance, provided in Attachment II, provides for states to use the appropriate number of prior years in the computation of the look-back percentage. It also requires states to report in the "comments" section the effective date of an enacted three-year look-back provision for any indicator. These instructions have been approved by the Office of Management and Budget as a non-substantive change to the existing ETA 539 collection.

6. **EUC08 Nonreduction Rule Reminder**. Section 501 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 extends the phase-out period and expiration date of the EUC08 program. As outlined in UIPL No. 04-10, Change 3, a state's EUC08 agreement will no longer apply and EUC08 will not be payable in a state if the U.S. Department of Labor determines that the method governing the computation of regular compensation under the state law has been modified in a manner such that the average weekly benefit amount of regular compensation which will be payable during the period of the agreement will be less than the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the state law in effect on June 2, 2010. The period of the agreement includes EUC08 phase-out, which is currently set to expire on June 9, 2012. States considering modification of the method governing the computation of regular compensation that would be inconsistent with this rule should ensure that such amendments to their law become effective after this date. For additional information about the applicability of the nonreduction rule, see UIPL No. 24-10.

7. **Action Requested**. State administrators should distribute this advisory to appropriate staff.

8. **Inquiries**. Questions should be addressed to your Regional Office.

9. **Attachments**.

   Attachment I – Draft Legislation – Temporary Three-Year "Look-back"
   Attachment II – Pending Update to HB401 Guidance for the ETA 539

NELP National Employment Law Project

Model Legislation
February 3, 2011

The Extended Benefits Program:

Model Legislation for Extended Benefit Triggers, including Optional TUR Trigger, and Temporary Three -Year Look Back Rule

About the Temporary Three-Year Look Back Rule

Under Public Law 111-312, states are authorized to modify their state laws governing Extended Benefits (EB) to temporarily substitute a 3-year look back period for the 2-year look back period currently applied to trigger on and off the program. The 2-year look back generally requires that the state's unemployment rate be at least 10 percent higher than it was for the corresponding 2-year period in either of the preceding 2 years. Because of sustained high unemployment, many states would trigger off the EB program in 2011 under the 2-year rule. See NELP's projections of when individual states are at risk of triggering off the EB program under the 2-year look back provision.

By adopting the 3-year look back option newly authorized by federal law, states can avert triggering off the program in 2011. The 3-year look back option can be adopted for weeks beginning after December 17, 2010 (the date the federal law was enacted) and is currently authorized for weeks beginning before December 31, 2011. The following model language has been drafted based on federal guidance and draft legislation issued by the US Department of Labor (UIPL 04-10, Change 7) which should be relied upon as the authoritative reference in drafting.

NELP's language has been drafted with the intent of helping a state avert a triggering off of the EB program at any point in 2011. By enacting the language below, a state would be able to restore its EB program immediately even if it triggered off prior to enactment. [States that enact the 3-year look back AFTER triggering off should consider whether to address any question regarding entitlement to retroactive benefits in the legislation.] In addition, the language below ties expiration of the 3-year look back option to either December 31, 2011 (the date in Public Law 111-312), or a later date in the event Congress elects to extend the federal law.

Model Legislation to Implement the Temporary Three-Year Look Back Rule

This language can be used as a model in all states that already have EB programs with *permanent* optional Total Unemployment Rate (TUR) triggers. States with optional TUR triggers that will sunset once authority for full federal funding expires should consult with USDOL to insure coordination of 3-year look back and trigger language.

I. ADD NEW SECTION THAT APPLIES 3-YEAR LOOK BACK RULE TO THE TEMPORARY PERIOD ALLOWED BY FEDERAL LAW

(NEW) Notwithstanding the provisions of <u>[CURRENT SECTION REGARDING "ON INDICATOR"]</u>, with respect to weeks of unemployment beginning after December 17, 2010, and continuing until December 31, 2011, or until the last week permitted by the federal law authorizing this provision, whichever is later,

(A) there is a state "on" indicator for a week if the average rate of insured unemployment for the period consisting of such week and the immediately preceding twelve weeks equals or exceeds five percent, and the average rate of insured unemployment for the period consisting of such week and the immediately preceding twelve weeks equals or exceeds one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding three calendar years, and

(B) there is a state "on" indicator for a week if the average rate of total unemployment in the state, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week (i) equals or exceeds six and one-half per cent, and (ii) equals or exceeds one hundred ten per cent of such average for any or all of the corresponding three-month periods ending in the three preceding calendar years.

II. AMEND SECTION REGARDING "OFF INDICATOR"

There is a state "off" indicator for a week only if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in *CURRENT SECTION REGARDING "ON INDICATOR"* <u>OR</u> <u>[NEW PROVISION ABOVE]</u> result in an "on" indicator.

III. AMEND SECTION REGARDING "HIGH UNEMPLOYMENT PERIOD"

"High unemployment period" means any period during which an extended benefit period would be in effect *UNDER CURRENT SECTION REGARDING "ON INDICATOR"* <u>OR [NEW PROVISION ABOVE]</u> were applied by substituting eight per cent for six and one-half per cent

Model Legislation to Implement State Extended Benefits Triggers

This language is intended for use by those states that have not yet adopted an optional Total Unemployment (TUR) trigger (either permanent or scheduled to expire when federal authority lapses) in their state EB laws. These states are Arkansas, Hawaii, Iowa, Louisiana, Maryland, Mississippi, Montana, Oklahoma, Utah and Wyoming. The language below in bold and italics can be incorporated into the state's current Extended Benefits law. The language in the first box below is optional for those states that decide to sunset the provision. Subsection C has been added and Subsection F has been amended to reflect the optional 3-year look back provision authorized by Public Law 111-393 on December 17, 2010. Optional effective date language is contained in the final box as subsection H. While this draft includes effective dates that will allow claimants who exhausted EUC in 2010 to qualify for Extended Benefits, the optional Section H clarifies that such claimants will became eligible for weeks of unemployment prospectively only.

DEFINITIONS --EXTENDED BENEFITS

A. As used in this section, unless the context clearly requires otherwise, "extended benefit period" means a period that:

(1) begins with the third week after a week for which there is a state "on" indicator;

(2) ends with either of the following weeks, whichever occurs later:

(a) the third week after the first week for which there is a state "off" indicator; or

(b) the thirteenth consecutive week of such period; and

(3) does not begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period that was in effect with respect to this state.

B. There is a "state 'on' indicator" for this state for a week if:

(1) the rate of insured unemployment not seasonally adjusted under this section for the period consisting of that week and the immediately preceding twelve weeks:

(a) equaled or exceeded one hundred twenty percent of the average of the rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; and

(b) equaled or exceeded five percent; or

(c) equaled or exceeded six percent, regardless of the rate of insured unemployment in the two previous years; or

(2) Effective with weeks of unemployment beginning after January 1, 2010*:

(a) the average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent; and

(b) the average rate of total unemployment in this state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in Subparagraph (a) of this paragraph, equals or exceeds one hundred ten percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(c) Notwithstanding the provisions of subdivisions(a) and (b) of this subparagraph, with respect to weeks of unemployment beginning after December 17, 2010, and continuing until December 31, 2011, or until the last week permitted by the federal law authorizing this provision, whichever is later,

(1) there is a state "on" indicator for a week if the average rate of insured unemployment for the period consisting of such week and the immediately preceding twelve weeks equals or exceeds five percent, and the average rate of insured unemployment for the period consisting of such week and the immediately preceding twelve weeks equals or exceeds one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding three calendar years, and

(2) there is a state "on" indicator for a week if the average rate of total unemployment in the state, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week (a) equals or exceeds six and one-half per cent, and (b) equals or exceeds one hundred ten per cent of such average for any or all of the corresponding three-month periods ending in the three preceding calendar years.

(d) Notwithstanding the provisions of (a), (b) and (c) of this subparagraph, this subparagraph shall cease to be in effect four weeks prior to the last week for which full federal sharing of Extended Benefits is authorized by Section 2005(a) of Public Law 111-5.

D. ***Except as provided in Subsection E of this section,*** the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) fifty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) thirteen times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) thirty-nine times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year....

E. Effective with respect to weeks beginning in a high-unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) eighty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) twenty times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) "forty-six" for "thirty-nine" in subparagraph (3)

F. For purposes of Subsection E of this section, "high-unemployment period" means a period during which an extended benefit period would be in effect if subparagraph (a) of Paragraph (2) of

Subsection B or subparagraph (a) of Paragraph(2) of Subsection C of this section were applied by substituting "eight percent" for "six and one-half percent".

OPTIONAL EFFECTIVE DATE LANGUAGE: H. No benefits shall be payable based on a state "on" trigger pursuant to Subsection B or Subsection C of this section for any week of unemployment beginning before the date of enactment of this Act.

* Effective date for optional TUR triggers should be prior to earliest week that any state claimant could have exhausted EUC in order to insure EB eligibility for all EUC exhaustees.

ATTACHMENT I

DRAFT LEGISLATION – TEMPORARY THREE-YEAR "LOOK-BACK"

DISCUSSION

Below is suggested legislative language for states that choose to amend their extended benefits (EB) law to provide for a temporary three-year "look-back" when determining "on" and "off" indicators as provided in Section 502 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312. This language supplements the draft language for subparagraphs (a)(2)(A) and (C) transmitted in Attachment II to UIPL No. 45-92 by creating a new subsection (b).

This suggested legislative language pertains to both the mandatory insured unemployment rate (IUR) indicator and the optional total unemployment rate (TUR) indicator. Although, in general, states are currently "on" EB through the TUR indicator, states, particularly those with temporary TUR indicators, may want to adopt the language pertaining to the IUR indicator as well as the TUR indicator language. (If authority for the three-year look-back is extended beyond December 31, 2011, it would be possible to remain "on" EB through the IUR indicator after states' temporary TUR indicators expire due to lack of continued 100 percent Federal funding of most EB costs.) States that have not been "on" EB during this recession may not wish to adopt any of this language, as it would have no practical effect.

There are two parts of the suggested legislative language that states may want to customize—the effective date and expiration date of this provision. The effective date was written to become effective upon enactment of P.L. 111-312. The bracketed bold language following is an alternative effective date based on the date established under state law, if it is later than the date of enactment of P.L. 111-312. The expiration date was written to mirror the current statutory end date for the three-year "look-back" – December 31, 2011. The bracketed bold language following provides an alternative, based on the possibility that Congress will extend this provision. It ties expiration of the provision to the date Congress chooses. There also are placeholders in bold for insertion of citations to the appropriate sections of the state's code.

DRAFT LANGUAGE

(b)(1) With respect to compensation for weeks of unemployment beginning after date of enactment of P.L. 111-312 **[or, if later, the date established under State law]**, and ending on or before December 31, 2011 **[or the date established in Federal law permitting this provision]**--

(A)(i)(I) there is a State "on" indicator for a week if the average rate of insured unemployment under **section XX of the state's code** for the period consisting of such week and the immediately preceding twelve weeks equals or exceeds 5 percent, and

(II) the average rate of insured unemployment under **section XX of the state's code** for the period consisting of such week and the immediately preceding twelve weeks equals or exceeds 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding three calendar years;

(ii) there is a State "off" indicator for a week based on the rate of insured unemployment only if for the period consisting of such week and the immediately preceding twelve weeks, paragraph (1)(A)(i) does not result in an "on" indicator.

(B)(i)(I) there is a State "on" indicator for a week if the average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 6.5 percent, and

(II) the average rate of total unemployment in the State (seasonally adjusted), as determined by the United States Secretary of Labor, for the 3-month period referred to in subclause (I), equals or exceeds 110 percent of such average for any or all of the corresponding 3-month periods ending in the 3 preceding calendar years;

(III) there is a "high unemployment period" as provided in **section YY of the state's code** if subclause (I) were applied by substituting "8 percent" for "6.5 percent";

(ii) there is a State "off" indicator for a week based on the rate of total unemployment only if for the period consisting of the most recent 3 months for which data for all States are published before the close of such week, paragraph (1)(B)(i) does not result in an "on" indicator.

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1962/1
JTK:...:....

Tue 4/26

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gjs

Gen Cat
(generate)

AN ACT ... **relating to:** the Wisconsin "on" indicator for unemployment insurance extended benefit purposes.

Analysis by the Legislative Reference Bureau

Currently, the maximum number of weeks of unemployment insurance benefits that an eligible claimant may qualify to receive is normally 26 weeks. However, during certain periods of high unemployment in this state, as defined by law, a claimant who has exhausted all of his or her rights to receive benefits in a given benefit year (period during which benefits are payable to a claimant) may potentially qualify to receive up to 13 weeks of "extended benefits," the cost of which, with certain exceptions, are normally shared between the federal government and employers in this state. Under recent federal legislation, the employer share is also paid by the federal government for private employers, including nonprofit organization employers but not including Indian tribal employers, during certain periods. For extended benefits to be paid in this state, there must be a Wisconsin "on" indicator, which is currently determined by calculating the rates of total or insured unemployment for various periods under one of three methods.

This bill adds a fourth method of determining a Wisconsin "on" indicator, which applies only for so long as full federal funding is provided (currently, for claims filed before January 4, 2012). Under this method, 1) the rate of insured unemployment for the period consisting of the week in which the determination is made and the 12 preceding weeks must equal or exceed 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding 3 calendar years and must equal or exceed 5 percent; or 2) the average rate of seasonally adjusted total unemployment for the period consisting of the most recent 3 months for which national data is available must equal or exceed 6.5 percent and must equal or exceed 110 percent of the average for any of the corresponding 3-month periods ending in the 3 preceding calendar years. Under federal and state law, however, once an extended benefit period ends because in a given week there is no Wisconsin "on" indicator, no new extended benefit period may begin for at least another 13 weeks thereafter. in this state

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 108.141 (1) (f) 3. b. of the statutes is amended to read:

108.141 **(1)** (f) 3. b. The average rate of total unemployment in this state, seasonally adjusted, as determined by the U.S. secretary of labor for the period consisting of the most recent 3 months for which data for all states are published before the close of that week equals or exceeds 110 percent of the average for either or both of the corresponding 3-month periods ending in the 2 preceding calendar year~~.~~ ; or delete period

History: 1971 c. 53; 1973 c. 247; 1975 c. 1, 343; 1977 c. 29, 133, 418; 1979 c. 52; 1981 c. 36 ss. 19 to 32, 45; 1981 c. 315, 390; 1983 a. 8 ss. 28 to 33, 53, 55 (3), (14) and (15) and 56; 1983 a. 27 ss. 1400g and 1807m; 1983 a. 189 ss. 162, 329 (28); 1985 a. 17; 1987 a. 38; 1991 a. 39, 89, 189, 269; 1993 a. 184, 373, 492; 1995 a. 27 ss. 3780, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 35, 39; 2001 a. 35; 2009 a. 1, 11.

SECTION 2. 108.141 (1) (f) 4. of the statutes is created to read:

108.141 **(1)** (f) 4. With respect to weeks of unemployment beginning on or after the date of enactment of P.L. 111-312, and ending with the week ending 4 weeks prior to the last week in which federal sharing is authorized by section 2005 (a) of P.L. 111-5 and any amendments thereto:

a. The rate of insured unemployment for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding 3 calendar years, and equaled or exceeded 5 percent; or

b. The average rate of total unemployment, seasonally adjusted, as determined by the U.S. secretary of labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of that week equals or exceeds 6.5 percent and equals or exceeds 110 percent of the average for any of the corresponding 3-month periods ending in the preceding 3 calendar years.

(END)

6/29 1:20pm

Call from Sen. Miller's office to RUSH jacket 1962/1.