INS ~~8A~~: 9B:

Benefits paid to employees who lose licenses required to perform work

Currently, if an employee is required by law to have a license issued by a governmental agency to perform his or her customary work for an employer, and the employee's employment is suspended or terminated because the license is suspended, revoked, or not renewed due to the employee's fault, the employee is not eligible to receive benefits until 5 weeks have elapsed since the end of the week in which the suspension or termination occurs or until the license is reinstated or renewed, whichever occurs first. The wages paid by the employer who suspended or terminated the employee are excluded in determining the eligibility of and amount of benefits payable to the employee while the license suspension, revocation, or nonrenewal is in effect. If benefits are paid to an employee using wages that were paid or treated as having been paid during a period when the employee's license was was suspended, revoked, or not renewed, the base period wages paid or treated as having been paid by the employer that suspended or terminated the employee are not charged to the employer's account for the period when the license suspension, revocation, or nonrenewal is in effect, but are instead charged to the balancing account of the unemployment reserve fund (pooled account financed by all employers who pay contributions that is used to pay benefits that are not chargeable to any employer's account). This bill provides that if an employee qualifies to receive benefits for any benefit year using base period wages paid or treated as having been paid during a period when wages are excluded from the employee's base period due to a license suspension, revocation, or nonrenewal, DWD must charge the cost of the benefits otherwise chargeable to the employer who suspended or terminated the employee to the balancing account for all weeks in that benefit year.

INS ~~10–18~~: 36-21:

SECTION 1. 108.04 (1) (f) of the statutes is amended to read:

108.04 **(1)** (f) If an employee is required by law to have a license issued by a governmental agency to perform his or her customary work for an employer, and the employee's employment is suspended or terminated because the employee's license has been suspended, revoked or not renewed due to the employee's fault, the employee is not eligible to receive benefits until 5 weeks have elapsed since the end of the week in which the suspension or termination occurs or until the license is

reinstated or renewed, whichever occurs first. The wages paid by the employer with which an employee's employment is suspended or terminated shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement while the suspension, revocation or nonrenewal of the license is in effect. This paragraph does not preclude an employee from establishing a benefit year using the wages excluded under this paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits paid during a benefit year otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 from which base period wages are excluded under this paragraph if an employee qualifies to receive benefits for any week in that benefit year using wages that were excluded under this paragraph.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 11, 287; 2011 a. 32, 123, 198, 236.

INS ~~41-24~~: 124-6 ✓

(#) The treatment of section 108.04 (1) (f) of the statutes first applies with respect to benefit years established on the effective date of this subsection.

replace pound sign with an autonumber

2013–2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1975/P7in2
JTK.....

INS 16-22

SECTION 1. 16.531 (4) of the statutes is created to read:

16.531 **(4)** This section does not apply to actual or projected imbalances in the unemployment reserve fund or to loans to the fund made under s. 20.002 (11) (b) 3m.

SECTION 32. 108.05 (1) (r) (intro.) of the statutes, as created by 2013 Wisconsin Act .... (this act), is repealed and recreated to read:

108.05 **(1)** (r) (intro.) Except as provided in s. 108.062 (6) (a), each eligible employee shall be paid benefits for each week of total unemployment that commences on or after January 5, 2014, at the weekly benefit rate specified in this paragraph. Unless sub. (1m) applies, the weekly benefit rate shall equal 4 percent of the employee's base period wages that were paid during that quarter of the employee's base period in which the employee was paid the highest total wages, rounded down to the nearest whole dollar, except that, if that amount is less than the minimum amount shown in the following schedule, no benefits are payable to the employee and, if that amount is more than the maximum amount shown in the following schedule, the employee's weekly benefit rate shall be the maximum amount shown in the following schedule and except that, if the employee's benefits are exhausted during any week under s. 108.06 (1), the employee shall be paid the

remaining amount of benefits payable to the employee in lieu of the amount shown in the following schedule: [See Figure 108.05 (1) (r) following]

INS QRS

Statewide unemployment rate	Maximum weeks of benefits
8 percent or higher	26
At least 7.5 percent but less than 8 percent	24
At least 7.0 percent but less than 7.5 percent	22
At least 6.5 percent but less than 7.0 percent	20
At least 6.0 percent but less than 6.5 percent	18
At least 5.5 percent but less than 6.0 percent	16
At least 5.0 percent but less than 5.5 percent	14
Less than 5.0 percent	12

INS XYZ

Wisconsin rate of insured unemployment	Maximum weeks of benefits
8 percent or higher	26
At least 7.5 percent but less than 8 percent	24
At least 7.0 percent but less than 7.5 percent	22
At least 6.5 percent but less than 7.0 percent	20
At least 6.0 percent but less than 6.5 percent	18
At least 5.5 percent but less than 6.0 percent	16
At least 5.0 percent but less than 5.5 percent	14
Less than 5.0 percent	12

INS HIJ

SECTION 1. 108.05 (3) (c) (intro.) of the statutes, as affected by 2013 Wisconsin Acts .... (Assembly Bill 15) and .... (this act), is repealed and recreated to read:

108.05 **(3)** (c) (intro.) Except when otherwise authorized in an approved work–share program under s. 108.062 and except as provided in par. (cm), a claimant is ineligible to receive any benefits for a week in which one or more of the following applies to the claimant for 32 or more hours in that week:

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105; 2003 a. 197; 2005 a. 86, 142; 2007 a. 20, 59, 97; 2009 a. 287; 2011 a. 198; s. 35.17 correction in (3) (c) 1.

INSERT MDA

Benefits for partial unemployment during weeks ~~including~~ that include holidays

Under current law, a claimant may, under certain circumstances, receive some UI benefits while the claimant is only partially unemployed (benefits for partial unemployment). However, a claimant is ineligible to receive any benefits for partial unemployment for a week in which one or more of the following applies to the claimant for 32 or more hours in that week: 1) the claimant performs work; 2) the claimant receives certain amounts treated as wages for that week; or 3) the claimant receives holiday pay, vacation pay, termination pay, or sick pay that is treated as wages under current law.

Under the bill, for purposes of these provisions limiting the availability of benefits for partial unemployment, the 32–hour ceiling for a claimant is reduced for a given week by eight hours for each state or federal holiday that occurs during that week, if both of the following apply: 1) the claimant only has base period wages from a single employer; and 2) that employer previously provided a notice to DWD designating that the employer will undergo a complete business shutdown on that holiday (or those holidays). The bill allows an employer to designate up to seven holidays per year for purposes of these provisions and requires the employer to provide the notice to DWD by December 1 of the year before the holidays. The bill provides that a complete business shutdown means that all locations operated by an employer are closed for business completely and no employee employed by the business is required by the employer to report for work.

INSERT MDB

Contribution and solvency rate schedules

Currently, all employers that engage employees in work that is covered under the UI law, other than governmental, nonprofit, and Indian tribe employers that elect to pay directly for the cost of benefits, must pay contributions (taxes) to finance ~~unemployment compensation~~ benefits. The total contributions of an employer are the sum of the employer's contribution rate and the employer's solvency rate, each of which varies with the employment stability of the employer and the solvency of the unemployment reserve fund (fund), from which benefits are paid. An employer's contributions payable as a result of its contribution rate are credited to the employer's account in the fund, while an employer's contributions payable as a result of its solvency rate are credited to the fund's balancing account, which is used to fund benefits not payable from any employer's account.

An employer's contribution rate is determined based upon the employer's reserve percentage. The employer's reserve percentage is the net balance of the employer's account as of the computation date (generally June 30), stated as a percentage of the employer's taxable payroll in the 12–month period ending on the computation date. Current law defines taxable payroll as the first $14,000 of wages paid by an employer to each employee during a calendar year. An employer's solvency rate is determined by reference to the employer's contribution rate and rises as the contribution rate rises.

Currently, there are four schedules of contribution rates and four schedules of solvency rates. The schedule that applies for any year depends upon the solvency of the fund on June 30 of the preceding year. Currently, the highest contribution rate that must be paid by an employer applies to an overdrawn employer with a reserve percentage of 6.0% or greater. The contribution rate for such an employer is 8.50% of taxable payroll for each of the four schedules of contribution rates. Also currently, the highest solvency rates for such an employer are between 1.25 and 1.35% of taxable payroll, depending on which schedule is in effect.

This bill amends each of the four schedules of contribution rates so that overdrawn employers with reserve percentages greater than 6.0% have higher contribution rates than they do under current law. Specifically, the bill provides that: 1) if an overdrawn employer has a reserve percentage of 7.0% or greater, but less than 8.0%, the contribution rate for such an employer is 9.25% of taxable payroll; 2) if an overdrawn employer has a reserve percentage of 8.0% or greater, but less than 9.0%, the contribution rate for such an employer is 10.00% of taxable payroll; and 3) if an overdrawn employer has a reserve percentage of 9.0% or greater, the contribution rate for such an employer is 10.70% of taxable payroll.

The bill also amends each of the four schedules of solvency rates to add lines corresponding to the added contribution rates and to make minor adjustments to the maximum solvency rates under current law. The bill provides, for each of the added contribution rates in each of the four schedules, for a solvency rate of 1.30% of taxable payroll.

INSERT ~~62–13~~ 62 – 12

SECTION 1. 108.05 (3) (c) (intro.) of the statutes is amended to read:

108.05 **(3)** (c) (intro.) ~~A~~ Except as provided in par. (cm), a claimant is ineligible to receive any benefits for a week in which one or more of the following applies to the claimant for 32 or more hours in that week:

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105; 2003 a. 197; 2005 a. 86, 142; 2007 a. 20, 59, 97; 2009 a. 287; 2011 a. 198; s. 35.17 correction in (3) (c) 1.

SECTION 2. 108.05 (3) (cm) of the statutes is created to read:

108.05 **(3)** (cm) 1. In this paragraph:

a. "Complete business shutdown" means that all locations operated by an employer are closed for business completely and no employee employed by the business is required by the employer to report for work.

b. "State or federal holiday" means a day specified in s. 230.35 (4) (a) or in 5 USC 6103 (a).

INS 3A:

BENEFIT DURATION AND AMOUNTS

Benefit duration for total unemployment

Currently, the maximum number of weeks of regular UI benefits payable to an eligible claimant who earns sufficient wages to qualify for those benefits is 26 weeks. The cost of these benefits is paid for by employers of this state. During periods of high unemployment, an eligible claimant may qualify to receive up to an additional 13 weeks of "extended benefits". Fifty percent of the cost of these benefits is paid for by employers of this state and 50 percent of the cost is paid for by the federal government.

This bill changes the maximum number of weeks of regular benefits payable to an eligible claimant to an amount that varies depending upon the statewide average unemployment rate for the 12–month period that ends on the last day of the 2nd calendar quarter preceding the beginning of the claimant's benefit year (period during which benefits are payable following the filing of a benefit claim). Under the bill, once a claimant begins a benefit year, the ~~claimant's benefit rate~~ is fixed for that benefit year. Because the maximum number of weeks of extended benefits payable to a claimant is calculated in part based upon the maximum number of weeks of regular benefits payable to a claimant, the change also reduces the maximum number of weeks of extended benefits payable to a claimant. Under the bill, the maximum number of weeks of regular benefits is determined as follows:

Statewide unemployment rate	Maximum weeks of benefits
8 percent or higher	26
At least 7.5 percent but less than 8 percent	24
At least 7.0 percent but less than 7.5 percent	22
At least 6.5 percent but less than 7.0 percent	20
At least 6.0 percent but less than 6.5 percent	18
At least 5.5 percent but less than 6.0 percent	16
At least 5.0 percent but less than 5.5 percent	14
Less than 5.0 percent	12

Benefit amounts

INS 9A:

Loans by this state to the unemployment reserve fund

Currently, with certain exceptions, the secretary of administration may reallocate, or borrow internally, from any state fund or account to ensure the continued solvency of another state fund or account if revenue to the fund or account to which the reallocation is made is expected to be sufficient to reverse the

reallocation. The outstanding reallocations at any time may not exceed a total of $400,000,000. If money from one state segregated fund is temporarily reallocated to another such fund, the secretary must charge interest to the receiving fund and credit this interest to the fund from which the reallocation is made.

This bill permits the secretary of workforce development to request the secretary of administration to reallocate moneys to the unemployment reserve fund from other state funds or accounts. Under the bill, the total outstanding amount of any reallocations may not exceed $50,000,000 at any given time. This amount is in addition to the current limit upon reallocations of $400,000,000. The bill prohibits the secretary of administration from assessing any interest to the unemployment reserve fund for moneys loaned to the fund. The bill provides that any loan to the unemployment reserve fund is subject to the approval of the Joint Committee on Finance. The bill directs the secretary of workforce development to request a loan from this state to the unemployment reserve fund whenever the secretary determines that employers in this state that are subject to a requirement to pay a federal unemployment tax would experience a lower tax rate if this state were to loan moneys to the fund and the loan could be made under the authority granted by the bill. The bill also directs the secretary of workforce development to repay this state for any loans made to the unemployment reserve fund whenever the secretary determines that repayment can be made without jeopardizing the ability of DWD to continue to pay other liabilities and costs chargeable to the fund. The bill directs the secretary to ensure that the timing of any repayment accords with federal requirements for ensuring a favorable tax experience for employers in this state.

INS 17-4:

SECTION 1. 20.002 (11) (a) of the statutes is amended to read:

20.002 **(11)** (a) All appropriations, special accounts and fund balances within the general fund or any segregated fund may be made temporarily available for the purpose of allowing encumbrances or financing expenditures of other general or segregated fund activities ~~which do not have sufficient~~ or for the purpose of financing unemployment insurance benefits from the unemployment reserve fund whenever there are insufficient moneys in the funds or accounts from which ~~they~~ the activities are financed ~~but have~~ or whenever there are insufficient moneys to ~~maintain~~ unemployment insurance benefit payments if there are accounts receivable balances or moneys anticipated to be received from lottery proceeds, as defined in s. 25.75 (1)

(c), tax or contribution revenues, gifts, grants, fees, sales of service, or interest earnings recorded under s. 16.52 (2) that will be sufficient to repay the fund or account from which moneys are transferred. The secretary of administration shall determine the composition and allowability of the accounts receivable balances and anticipated moneys to be received for this purpose in accordance with s. 20.903 (2) and shall specifically approve the use of surplus moneys from the general or segregated funds after consultation with the appropriate state agency head for use by specified accounts or programs. The secretary of administration shall reallocate available moneys from the budget stabilization fund under s. 16.465 prior to reallocating moneys from any other fund.

SECTION 2. 20.002 (11) (b) 1. of the statutes is amended to read:

20.002 **(11)** (b) 1. ~~The~~ Except with respect to reallocations made under subd. 3m., the secretary of administration shall limit the total amount of any temporary reallocations to a fund other than the general fund to $400,000,000.

History: 1971 c. 125; 1973 c. 90, 333; 1975 c. 39 s. 732 (1); 1975 c. 164, 198; 1977 c. 29, 196, 373, 418, 447; 1979 c. 34; 1981 c. 14, 20, 61, 93, 314; 1983 a. 3, 27, 192; 1985 a. 29, 120; 1985 a. 135 s. 85; 1985 a. 332 s. 253; 1987 a. 4, 27, 186; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 51, 269; 1993 a. 16, 437; 1997 a. 237; 1999 a. 9; 2001 a. 16; 2003 a. 35; 2007 a. 125; 2009 a. 11, 28; 2011 a. 32.

SECTION 3. 20.002 (11) (b) 3m. of the statutes is created to read:

20.002 **(11)** (b) 3m. Upon request of the secretary of workforce development under s. 108.16 (7), the secretary of administration may temporarily transfer moneys available under par. (a) from to the unemployment reserve fund. The secretary of administration shall credit repayments received from the unemployment reserve fund to the funds or accounts from which the transfer was made. The transfers outstanding under this subdivision may not exceed a total of $50,000,000 at any time. No transfer may be made under this subdivision unless the secretary of administration first submits written notice to the cochairpersons of the joint committee on finance that the transfer is proposed to be made. If the cochairpersons of the committee do not notify

the secretary of administration that the committee has scheduled a meeting for the purpose of reviewing the proposed transfer within 30 days after the date of the secretary's notification, the transfer may be made as proposed by the secretary. If, within 30 days after the date of notification by the secretary of administration, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed transfer, the transfer may be made under this subdivision only upon approval of the committee.

History: 1977 c. 196, 418; 1979 c. 34; 1981 c. 20; 1983 a. 27; 1987 a. 27; 1989 a. 31, 127; 1991 a. 39, 269; 1993 a. 16; 1995 a. 27; 1997 a. 27; 2001 a. 16, 109; 2005 a. 25; 2009 a. 28, 276; 2011 a. 10, 32; s. 13.92 (2) (i).

SECTION 4. 20.002 (11) (c) of the statutes is amended to read:

20.002 **(11)** (c) The secretary may assess a special interest charge against the programs or activities utilizing surplus moneys within the same fund under this subsection in an amount not to exceed the daily interest earnings rate of the state investment fund during the period of transfer of surplus moneys to other accounts or programs. Except as provided in s. 16.465 and except with respect to transfers made under par. (c) 3m., the secretary shall assess a special interest charge against the fund utilizing surplus moneys under this subsection in an amount equal to the rate of return the state investment fund earnings would have created to the fund from which the reallocation was made. This interest shall be calculated and credited to the appropriate fund at the same time the earnings from the state investment fund are distributed and shall be considered an adjustment to those earnings.

History: 1971 c. 125; 1973 c. 90, 333; 1975 c. 39 s. 732 (1); 1975 c. 164, 198; 1977 c. 29, 196, 373, 418, 447; 1979 c. 34; 1981 c. 14, 20, 61, 93, 314; 1983 a. 3, 27, 192; 1985 a. 29, 120; 1985 a. 135 s. 85; 1985 a. 332 s. 253; 1987 a. 4, 27, 186; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 51, 269; 1993 a. 16, 437; 1997 a. 237; 1999 a. 9; 2001 a. 16; 2003 a. 35; 2007 a. 125; 2009 a. 11, 28; 2011 a. 32.

SECTION 5. 20.002 (11) (d) (intro.) of the statutes is amended to read:

20.002 **(11)** (d) (intro.) ~~This~~ Except with respect to transfers made under par. (b) 3m., this subsection applies only to those funds participating in the investment fund for purposes of temporary reallocation between funds or accounts ~~and does not~~

~~include~~ . No transfer may be made from any of the following funds or specified accounts in these funds:

History: 1971 c. 125; 1973 c. 90, 333; 1975 c. 39 s. 732 (1); 1975 c. 164, 198; 1977 c. 29, 196, 373, 418, 447; 1979 c. 34; 1981 c. 14, 20, 61, 93, 314; 1983 a. 3, 27, 192; 1985 a. 29, 120; 1985 a. 135 s. 85; 1985 a. 332 s. 253; 1987 a. 4, 27, 186; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 51, 269; 1993 a. 16, 437; 1997 a. 237; 1999 a. 9; 2001 a. 16; 2003 a. 35; 2007 a. 125; 2009 a. 11, 28; 2011 a. 32.

INS 62–13:

SECTION 6. 108.06 (1) of the statutes is amended to read:

108.06 **(1)** Except as provided in ~~subs.~~ sub. (6) ~~and (7)~~ and ss. 108.141 and 108.142, no claimant may receive total benefits based on employment in a base period greater than ~~26 times~~ the claimant's weekly benefit rate under s. 108.05 (1) or 40% of the claimant's base period wages, whichever is lower. Except as provided in ~~subs.~~ sub. (6) ~~and (7)~~ and ss. 108.141 and 108.142, if a claimant's base period wages are reduced or canceled under s. 108.04 (5) or (18), or suspended under s. 108.04 (1) (f), (10) (a), or (17), the claimant may not receive total benefits based on employment in a base period greater than ~~26~~ the number of weeks determined under s. 108.06 (1m) ~~times~~ the claimant's weekly benefit rate under s. 108.05 (1) or 40% of the base period wages not reduced, canceled or suspended which were paid or payable to the claimant, whichever is lower.

History: 1971 c. 53; 1975 c. 343; 1981 c. 36; 1983 a. 8 ss. 23 to 27, 53, 55 (3), (4), (12), (13) and (14) and 56; 1983 a. 27 s. 1807m; 1983 a. 337; 1985 a. 17; 1987 a. 38, 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2009 a. 11, 287.

SECTION 7. 108.06 (1m) of the statutes is created to read:

108.06 **(1m)** (a) The department shall determine the maximum number of weeks of regular benefits under sub. (1) by calculating the average Wisconsin rate of insured unemployment, as defined in s. 108.141 (1) (i), for each 12–month period ending on March 31 and September 30 of each year. For benefit years beginning after the next June 30 or December 31 following each calculation, the maximum number of weeks of regular benefits is as follows:

Figure 108.06 (1m):

Wisconsin rate of insured unemployment	Maximum weeks of benefits
8 percent or higher	26
At least 7.5 percent but less than 8 percent	24
At least 7.0 percent but less than 7.5 percent	22
At least 6.5 percent but less than 7.0 percent	20
At least 6.0 percent but less than 6.5 percent	18
At least 5.5 percent but less than 6.0 percent	16
At least 5.0 percent but less than 5.5 percent	14
Less than 5.0 percent	12

(b) The maximum number of weeks of regular benefits payable to a claimant under sub. (1) ~~for~~ in the first week of the claimant's benefit year is the maximum ~~number of weeks payable to that claimant for each week in the claimant's benefit~~ number of weeks of regular benefits year, regardless of the maximum ~~rate~~ in effect ~~at the time~~ that benefits become payable to the claimant.

INS 67–24:

SECTION 8. 108.142 (4) of the statutes is amended to read:

108.142 **(4)** DURATION OF WISCONSIN SUPPLEMENTAL BENEFITS. During a Wisconsin supplemental benefit period, no claimant may receive total benefits based on employment in a base period greater than ~~34~~ the number of weeks determined under s. 108.06 (1m) plus 8 times the claimant's weekly benefit rate under s. 108.05

(1) or 40% of wages paid or payable to the claimant in his or her base period under s. 108.04 (4) (a), whichever is lower.

History: 1983 a. 8, 27; 1983 a. 189 s. 329 (28); 1983 a. 384; 1987 a. 38; 1991 a. 39, 189, 269; 1995 a. 27, ss. 3781, 9130 (4); 1997 a. 3, 39; 2001 a. 43; 2009 a. 1.

INS 69–12:

SECTION 9. 108.16 (13) of the statutes is created to read:

108.16 **(13)** If the secretary determines that employers in this state that are subject to a requirement to pay a federal unemployment tax would experience a lower tax rate if this state were to loan moneys to the fund under s. 20.002 (11) (b), the secretary shall request the secretary of administration to make one or more transfers to the fund in the amount required to maintain a favorable federal tax experience for employers. The secretary shall not request a transfer under this subsection if the outstanding balance of such transfers at the time of the request would exceed $50,000,000. Whenever the secretary determines that the balance of the fund permits repayment of a transfer, in whole or in part, without jeopardizing the ability of the department to continue to pay other liabilities and costs chargeable to the fund, the secretary shall repay the department of administration for the amount that the secretary determines is available for repayment. The secretary shall ensure that the timing of any repayment accords with federal requirements for ensuring a favorable tax experience for employers in this state.

INS 125–12:

(#) The treatment of sections 108.06 (1) (with respect to the maximum duration of regular benefits) of and (1m) and 108.142 (4) of the statutes first applies with respect to benefit years established after June 30, 2014.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/~~P6dn~~ P7dn
JTK&MED:cjs:rs

stays

~~May 1, 2013~~
today's date

Representative Knodl:

18, 20, 28, 30, 31, 32, and 33

1. This draft is the initial draft of your items 2, 3, 4, 6, 7, 8, 9, 10, 11, 14 (all components), 15 (all components), 16, 17, 19, 21, 22, 23, 24, 25, 26, 27, ~~and 32~~ (Sussman memo to UIAC, 4/22/13). We are working on other items at this time and will be reviewing them with the DWD legal staff. Several items have been revised based upon your instructions on April 25. The other items will be added in successive redrafts when we have all the information we need to reduce them to draft format.

INS MD-DN

2. ~~Please review the changes to the item relating to temporary help companies. We~~ made some additional modifications based on our understanding of the intent of this proposal, as well as the changes you requested. Please let us know if any further changes are needed.

3. For the employer handbook being prepared by DWD, as requested, we added a requirement that the handbook contain a line to allow an employee to acknowledge that the employee is aware of the contents of the handbook. However, we remain unclear about what the function of such a signature would be. Because the handbook is, according to the bill, being ~~written~~ for employers, and not employees, it is not clear to us why an employee would be reading such a handbook because most of the contents of the handbook would not be relevant to employees. We recommend clarifying the ~~utility of this signature requirement.~~

INS JTK DN1

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/P7dni
JTK...:...:...

JTK DNI

3

1. With respect to the suspension and requalification requirements for claimants who lose licenses required for them to perform their work under s. 108.04 (1) (f), this draft includes only the changes to charging of benefits that were approved by the UIAC.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/P7dn
JTK&MED:cjs:jf

May 9, 2013

Representative Knodl:

1. This draft is the initial draft of your items 2, 3, 4, 6, 7, 8, 9, 10, 11, 14 (all components), 15 (all components), 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, and 33 (Sussman memo to UIAC, 4/22/13). We are working on other items at this time and will be reviewing them with the DWD legal staff. Several items have been revised based upon your instructions on April 25. The other items will be added in successive redrafts when we have all the information we need to reduce them to draft format.

2. Regarding the item related to excluding employment by prison inmates, please note that we also repealed s. 108.07 (8), stats., in conjunction with the exclusion, because this provision would appear to no longer ever be applicable as a result of the exclusion. If this provision should instead be retained or otherwise modified, let us know. Also, we included this repeal within the initial applicability provision for the exclusion of prison inmates. Please let us know if the repeal of s. 108.07 (8), stats., should instead have its own initial applicability provision.

3. With respect to the suspension and requalification requirements for claimants who lose licenses required for them to perform their work under s. 108.04 (1) (f), this draft includes only the changes to charging of benefits that were approved by the UIAC.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/P8dn
JTK&MED:cjs:ph

May 13, 2013

Representative Knodl:

1. This draft is the initial draft of your items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14 (all components), 15 (all components), 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, and 33 (Sussman memo to UIAC, 4/22/13). We are working on other items at this time and will be reviewing them with the DWD legal staff. Several items have been revised based upon your instructions on April 25. The other items will be added in successive redrafts when we have all the information we need to reduce them to draft format.

2. Upon consultation with DWD legal staff, we determined that the current language in s. 108.14 (7) (a), stats., is adequate to allow DWD to withhold its digest of LIRC decisions under proposed s. 108.14 (22) from public inspection.

3. Changes to the analysis item "Failure of claimants to provide requested information" will appear in the next version.

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Memorandum

To: Janell Knutson

From: Scott Sussman

CC: Tom McHugh

Date: 04/03/2013

Re: **Repayment of GPR Loan Using Unemployment Trust Fund Money**

Under Title XII of the Social Security Act, the Federal Unemployment Account (FUA) may provide a loan to fund state unemployment programs to ensure a continued flow of benefits during times of economic downturn. According to the U.S. Department of Labor, Employment and Training Administration, 22 states and the U.S. Virgin Islands currently have loan balances in their Trust Fund accounts. At the last Unemployment Insurance Advisory Council meeting Thomas McHugh, Director of Bureau of Tax and Accounting, estimated that the balance owed by Wisconsin was at a little over $930,000,000.

Instead of obtaining advances from FUA states may obtain loans from other sources to pay UC. These loans may come from state revenues, from selling bonds, or other sources. The Department has been verbally informed that a state legislator is proposing that Wisconsin allocate GPR money to loan to the unemployment trust fund money to retire all or a portion of the outstanding debt owed by Wisconsin to FUA. The proposal includes that this loan, along with interest, would then need to be repaid with unemployment fund money.

UIPL 07-04 provides guidance regarding whether a state may withdraw money from its unemployment fund to repay aspects of the loan. It provides:

- **Payment of Principal.** The repayment of the principal of the loan may be repaid from unemployment fund money if:

  (a) The original loan is made for the purpose of paying UC under the state law;
  (b) The proceeds of the loan are either actually used for the payment of UC or deposited in the state's account in the Unemployment Trust Fund. (If the loan is not limited to the payment of UC (for example, if a bond issuance also finances

workers compensation or temporary disability payments), the amount that may be repaid from the state's unemployment fund is limited to the amount actually used for the payment of UC plus any amount deposited in the state's account in the Unemployment Trust Fund that is limited to the payment of UC.);

(c) The money used for the payment of UC is explicitly characterized as a loan to pay UC at the time it is dedicated to the payment of UC; and,

(d) The loan and repayment are consistent with the state law as interpreted by competent state authority. This assures that the expenditure of the loan for UC was lawful and that repayment of the loan is a proper withdrawal from the unemployment fund.

- **Payment of Interest and Fees.** Unemployment fund money may not be used to pay interest, loan/bond fees, or other administrative costs associated with a loan to pay unemployment insurance debt. However, a state may use Reed Act money or UC Modernization Incentive Payments, if appropriated by its state legislature for the payment of interest and fees. A federal law called the Reed Act allows Congress to transfer money from the federal UI trust funds to individual state accounts. The term "Reed Act" describes moneys transferred to state accounts in the Unemployment Trust Fund under Sections 903 (a) and (d), of the Social Security Act. Under statutory-prescribed conditions, a state may use these moneys for certain administrative expenses, including the administration of the state's UC law. UIPL 07-04 change 1 further provides "a state may, if the moneys are appropriated by the state legislature consistent with Section 903, SSA, use Reed Act or UC Modernization Incentive Payments to pay these costs [interest on loans or other fees associated with a loan to pay outstanding debt owed by Wisconsin to FUA]."

  According to Mr. McHugh the Department has $5,256,193 of Reed Act money in the Trust Fund. This is currently being spent on Postage and Apprenticeships. In 2012 we spent $2.8 million of Reed Act. He estimates that apprenticeships run $130000 - $135,000 per month and postage runs $60,000 to $100,000 per month. He stated that if further inquiry was needed with respect to this matter it could be determined how much of the $5.2 million has been allocated to be spent, but that he assumes all of it.

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	**CLASSIFICATION** Withdrawal Standard **CORRESPONDENCE SYMBOL** DL **DATE** December 17, 2003

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER No.7-04

TO: STATE WORKFORCE AGENCIES

FROM: CHERYL ATKINSON /s/
Administrator
Office of Workforce Security

SUBJECT: Repayment of Non-Federal Loans Used to Pay Unemployment Compensation

1. **Purpose.** To provide the Department of Labor's position on the use of unemployment fund money to repay loans obtained from non-federal sources that were used to pay unemployment compensation (UC) under state law.

2. **Reference.** Sections 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act (FUTA); Section 303(a)(5) of the Social Security Act (SSA); Title XII, SSA; Unemployment Insurance Program Letter No. 39-87; and Training and Employment Guidance Letters Nos. 18-01 and 18-01, Change 1.

3. **Background.** Instead of obtaining advances from the Federal Unemployment Account as provided under Title XII of the SSA, states may obtain loans from other sources to pay UC. These loans may come from state revenues or from selling bonds. Some states have asked whether these loans (including bonds) may be repaid with unemployment fund money in view of the requirement in Federal law that a state not withdraw money from its unemployment fund for any purpose other than the payment of UC.

Specifically, Section 3304(a)(4), FUTA, provides, as a condition of employers in a state receiving credit against the Federal unemployment tax, that "all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation . . . ." (The sole germane exception - Reed Act money - is discussed below.) A similar "withdrawal standard" is found in Section 303(a)(5), SSA, as a condition of states receiving grants for the administration of their UC laws. "Compensation" is defined in Section 3306(h), FUTA, as "cash benefits

payable to individuals with respect to their unemployment."

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None	Continuing

4. **Repayment of Principal.**. The Department's position is that the principal on a loan from any source that is used to pay UC may be repaid from unemployment fund money if the following conditions are met:

a. The loan is made for the purpose of paying UC under the state law, and the proceeds of the loan have either actually been used for the payment of UC or have been deposited in the state's account in the Unemployment Trust Fund from which they may be withdrawn only for the payment of UC. Because there is a direct relationship between the loan and the payment of UC, the withdrawal standard's requirement that money be withdrawn only for the payment of compensation is met.

If the loan is not limited to the payment of UC (for example, if a bond issuance also finances workers compensation or temporary disability payments), the amount that may be repaid from the state's unemployment fund is limited to the amount actually used for the payment of UC plus any amount deposited in the state's account in the Unemployment Trust Fund that is limited to the payment of UC.

b. The money used for the payment of UC is explicitly characterized as a loan for the payment of UC at the time it is dedicated to the payment of UC. If it is not so characterized, there is no loan for the payment of UC. To be permissible under the withdrawal standard, there must be a direct relationship between the payment of UC and any withdrawal from the unemployment fund. A withdrawal to "repay" money not initially characterized as a loan will not clearly be for the payment of UC, but instead could be for another purpose such as making up a shortfall in the fund from which the money came.

c. The loan and repayment are consistent with the state law as interpreted by competent state authority. This assures that the expenditure of the loan for UC was lawful and that repayment of the loan is a proper withdrawal from the unemployment fund.

5. **Payment of Interest and Fees.** Unemployment fund money may not be used to pay interest, loan/bond fees, or other administrative costs. However, a state may use Reed Act money, if appropriated by its state legislature, to pay any of these costs associated with the principal described in "a." above. Since these interest/administrative costs are related to obtaining sufficient funds to cover the costs of paying UC, they are costs of administering a state's UC law and permissible under the Reed Act. (See Unemployment Insurance Program Letter No. 39-87; and Training and Employment Guidance Letter Nos. 18-01 and 18-01, Change 1, for discussions of Reed Act money and their permissible uses.)

Note, however, that grants received from the Department of Labor for the

administration of a state's UC law may not be used to pay interest. Unlike Reed Act money, UC grants are subject to 29 CFR 97.22, which provides that allowable costs will be determined under OMB Circular No. A-87. Item 26 of Attachment B of the Circular provides that "[c]osts incurred for interest . . . however represented, are unallowable" with certain exceptions related to real property and equipment.

6. **Use of Title XII Advances.** The Department will not approve requests for Title XII advances to pay outstanding loans/bonds. The intent of Title XII is to allow states to continue to pay UC even though their accounts in the Unemployment Trust Fund are at zero. Thus, to obtain these advances, there must be an immediate need for money to pay benefits directly to individuals. This immediate need is expressed in Section 1201(a)(1)(B), SSA, which limits the amount that may be requested to a "3-month period;" and Section 1201(a)(3)(B), SSA, which requires that, in requesting an advance, the state take "into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month."

This reverses the position taken in Field Memorandum No. 64-83, a 1983 communication from the National to the Regional Offices, which apparently did not take this analysis into account.

7. **Action Required.** Administrators should provide this information to appropriate staff and assure that unemployment fund money is used consistent with this advisory.

8. **Inquiries.** Direct questions to the appropriate Regional Office.

Memorandum

To: Janell Knutson

From: Scott Sussman

Date: 04/03/2013

Re: **Random audit of claimant's work search efforts**

The Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, compels States to perform random audits of the work search requirements for all claimants in the Emergency Unemployment Compensation Program of 2008. In addition to the random audits, the collection of data documenting State audit activities and results is required. This information collection is necessary for oversight of the program and is also authorized under Social Security Act section 303(a)(6), 42 U.S.C. 503(a)(6).

The language from the Act simply provides "Random auditing.--The Secretary shall establish for each State a minimum number of claims for which work search records must be audited on a random basis in any given week.".

Subsequently, the Department of Labor published UIPL 04-10 Change 10 that provides more clarification on the requirements associated with this federal mandate. A copy of this is attached to this memorandum.

The number of audits a state must perform is controlled by a formula. The formula provides that a state will audit .5 percent of the total number of paid EUC08 weeks. The resulting samples that each state needs to perform will be between 50 and 1,500 each week. Wisconsin conducted 1,603 audits of EUC08 claimants from the time-period of September 30, 2012 through November 11, 2012.

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION EUC
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE September 20, 2012

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

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Work Search Requirements for Emergency Unemployment Compensation (EUC) Recipients

1. **Purpose.** To advise state workforce agencies of the new provisions under the Middle Class Tax Relief and Job Creation Act of 2012 governing work search requirements for EUC recipients and state responsibilities for conducting random audits of recipients' work search activities.

2. **References.**

   - *Middle Class Tax Relief and Job Creation Act of 2012*, (Public Law (Pub. L.) 112-96), Title II, Sections 2001-2184 (Extended Benefits, Reemployment and Program Integrity Improvement Act (Act));
   - *Supplemental Appropriations Act, 2008*, as amended, Pub. L. 110-252, Title IV, Sections 4001-4007 (EUC Act);
   - Training and Employment Guidance Letter (TEGL) No. 20-11, *Reemployment Services and Reemployment and Eligibility Assessments for Recipients of Emergency Unemployment Compensation*;
   - Unemployment Insurance Program Letter (UIPL) No. 23-08, *Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment Compensation*, and its Changes 1, 2, 3, 4, 5, and 6; and
   - UIPL No. 04-10, *Extension of Temporary Provisions—Emergency Unemployment Compensation, 2008, Federal Additional Compensation, and Extended Benefits*, and its Changes 1, 2, 3, 4, 5, 6, 7, 8, and 9.

3. **Background.** Pub. L. 112-96 amended Section 4001(b) of the EUC Act by adding new Subsection (4) that conditions EUC eligibility upon a claimant being "able to work, available to work, and actively seeking work." New Section 4001(h)(1) defines "actively seeking work" to mean that an individual must:

   - Register for Employment Services as prescribed by the state agency;

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- Engage in an active search for work that is appropriate in light of the labor market and the individual's skills and capabilities, and includes an appropriate number of employer contacts as determined/prescribed by the state;
- Maintain a record of his/her work search, including employers contacted, method of contact, and date of contact; and
- When requested, provide the work search record to the state agency.

Section 4001(h)(2) was added requiring the Secretary of Labor to establish a minimum number of claims for which work search records must be randomly selected for audit in any given week. States must conduct these random audits to ensure that claimants receiving EUC are meeting the state's work search requirements. This UIPL provides guidance to states for these audits.

4. **Notification of Work Search Requirements.** UIPL No. 04-10, Change 9, and TEGL No. 20-11, which the Employment and Training Administration (ETA) issued recently on amendments to the EUC Act made by the Middle Class Tax Relief and Job Creation Act, advised states to immediately begin notifying EUC claimants that they must meet new EUC work search requirements. The UIPL advised states that they may make such notification by mail, Internet, or interactive voice response telephone systems.

Exceptions to the Work Search Requirements

- An EUC claimant participating in a state-approved training program may not be disqualified from receiving benefits for unavailability for, or not actively seeking, work or refusal to accept work (see Section 3304(a)(8), Federal Unemployment Tax Act).[1]
- Section 4001(h)(1)(A) requires state Employment Service registration "in such a manner and to such extent as prescribed by the state agency." Therefore, if the agency under state law does not require registration for certain groups, such as union members who seek work through a hiring hall, these groups are excused from this requirement.
- Section 4001(h)(1)(B) requires an active search for work that is "appropriate in light of the employment available in the labor market, the individual's skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the state." If state law permits or requires some workers to seek work through a hiring hall, that could impact the number of employer contacts that is appropriate for these claimants. Further, the state may determine that the appropriate number of contacts for an individual on a short term or seasonal layoff or with a letter of "intent to hire" from an employer is zero, since the individual is job attached.

Exception Related to Demonstration Projects

The active search for work requirement will not apply to individuals participating in a demonstration project authorized under section 305, SSA. Section 305(e) authorizes two types of activities that a demonstration project may include: subsidies for employer-provided training,

[1] That section provides: "(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work)..."

such as wage subsidies; and direct disbursements to employers who hire individuals receiving Unemployment Compensation (UC), including EUC.

With regard to the first activity, section 3304(a)(8), FUTA, provides that "compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work)[.]" Since training approved under a demonstration project is approved training, the work search requirement will not apply to individuals while in that training.

With regard to the second activity, an individual will be ineligible for UC/EUC while employed by an employer participating in a demonstration project. Accordingly, the work search requirement will not apply to this individual while in that employment. States are not required to and should not modify their state laws or otherwise weaken work search requirements in order to participate in the demonstration project.

5. Auditing Work Search Records. Section 4001(h)(2) requires the U.S. Department of Labor (Department) to "establish for each state a minimum number of claims for which work search records must be audited on a random basis in any given week." Attachment 1 to this UIPL includes procedures to help states select the sample of claims to be audited each week. The universe is the total number of paid EUC weeks, and the sample size is 0.5 percent of that universe. The procedures in Attachment 1 are designed so that the number of resulting samples will be between 50 and 1,500. Random audits are intended to be conducted for claims paid for a specific week of unemployment. States that use bi-weekly certifications for continued claims filing must ensure that each paid week is included in the pool of claims to be sampled.

- For those claims randomly selected, the audit of the EUC recipients' work search must include a review of the claimants' work search activities for the selected week to determine whether the claimants met the work search requirements for that week as prescribed by the state.

- To help claimants meet the new work search requirements, the state may develop a work search log that claimants can use to track their work search efforts, recording at a minimum, employers contacted, method of contact, and date contacted. The log may be returned by mail, e-mail, Internet, or by any cost effective means. There is no requirement that a work search audit for a claim record randomly selected under section 4001(h)(2) be conducted with the claimant present. However, if the only way to verify that the work search requirements were met is through an in person review, states must schedule the claimant for an in-person interview.

Verification of Activities

In conducting random audits, states must attempt to verify at least one work search activity or contact listed by the claimant. A number of different methods may be used by states to verify work search activity. For example, if the claimant indicated that s/he sent a resume to an employer by e-mail, the state may verify that the resume was sent by requesting that the claimant

provide a snapshot of his/her "Sent Items" e-mail log. This will contain information such as the recipient, subject of the document, the date and time the document was received by the intended recipient, etc. Verification can also be made by the claimant providing documentation that shows the employer's acknowledgement of the application and/or resume. In the states' notifications to claimants, the state should advise claimants that they should retain copies of such e-mail exchanges and/or other electronic evidence as part of their work search records. Another verification method would be contacting the employer by phone, as appropriate. This is a traditional practice that states already use. Note: Verification with the state Employment Service alone that a claimant has registered as prescribed by the state does not satisfy this verification requirement since the claimant must also contact employers to meet the EUC work search requirement.

The statute makes these audits mandatory; it does not allow the Department to waive the requirement. Thus, for monitoring purposes, states must report the audit activities that correspond to the "weeks compensated" as reported on the EUC-specific ETA 5159 (Item 14). States must determine the acceptability of the work search documentation presented and whether the claimant met the requirements or was appropriately excused from the work search requirement. Any issues related to EUC work search requirements, such as when individuals do not provide documentation of their work search activities, must be referred for adjudication, as must any other issue uncovered during the audit. As noted above, the Department recognizes that states may, under their state law, waive the work search requirements for certain reasons, such as when individuals are attending approved training. Thus, when a claimant whose claim is selected for audit is in approved training, the state will review the individual's approved training status to ensure such waiver was appropriate.

6. **Work Search Audit Administrative Funding.** State agencies should include requests for reimbursement for the administrative costs associated with the auditing of work search records on line 26 of the online ETA UI3 - Quarterly Financial Report (Regular). Thirty minutes are allowed for each audit. The calculation for determining such costs will follow the computation of above base earnings and should be documented in the comments section of the UI3. An example of this calculation is as follows: ((number of audits conducted x 30 minutes)/(standard quarterly hours paid x 60 minutes)) x experience leave factor x quarterly PS/PB rate x 1.19 = total reimbursement. Note: The standard quarterly hours paid, experience leave factor and quarterly PS/PB rate are reported on the UI3 under the section B heading, line 23 and line 24 respectively. The number of audits conducted for which reimbursement is requested must agree with the number of random audits conducted as reported on line 3 of the ETA 9162, Random Audit of EUC 2008 Claimants.

7. **Required Reporting.** The reporting requirements for the EUC program that were in place before these amendments have not changed. However, the new work search requirements and the requirement that states conduct random audits of claimants' work search activities necessitate that states track and report these audit activities and the resulting outcomes.

Attachment 2 to this UIPL contains the instructions for completing the new Form ETA 9162, which states will use to report aggregate random audit activity and outcomes. This report was recently approved (OMB No. 1205-0495) and must be submitted, on a quarterly basis, through

the current electronic reporting system that states use to submit virtually all Unemployment Insurance required reports. The Department anticipates that this report will be available in the reporting system by mid-July, 2012, and that the first report, for activity during the second calendar quarter of 2012, will be due November 1, 2012. States with questions about the new Form ETA 9162 or Attachment 1 to this UIPL should contact the appropriate Regional Office.

8. Interpretation. The information in this document is issued to the states and cooperating state agencies as guidance provided by the Department in its role as the principal in the EUC program. As agents of the Federal government, the states and cooperating state agencies may not deviate from this guidance without the prior approval of the Department.

9. Action Requested. Administrators are to provide this guidance to the appropriate staff.

10. Inquiries. Questions should be directed to the appropriate Regional Office.

11. Attachments.

Attachment 1 - Sampling Procedures for EUC Claims Work Search Audits
Attachment 2 - Form ETA 9162 Random Audit of EUC 2008 Claimants

Memorandum

To: Janell Knutson

From: Scott Sussman

Date: 04/03/2013

Re: **Review of Select Proposals from Legislators**

The Department has received a number of proposals from State Legislators who are considering reforms to the unemployment insurance program. This memorandum summarizes some potential legal issues with four of these proposals.

1) Item # 12 Employer's Ability to Reoffer Employment

The proposal would require the Department to provide employees contact information to their former employer in order that the employer may offer suitable employment to an employee who is collecting unemployment insurance benefits.

There are a number of issues that would need to be considered with respect to this proposal:

(a) The first is the potential that releasing this information may violate federal regulations. These federal regulations are contained at 20 CFR 603. Section 303(a)(1) of the SSA (42 U.S.C. 503(a)(1)) provides that, for the purposes of certification of payment of granted funds to a State under Section 302(a) (42 U.S.C. 502(a)), State law must include provision for such methods of administration as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due. The Department of Labor interprets Section 303(a)(1), SSA, to mean that "methods of administration" that are reasonably calculated to insure the full payment of UC when due must include provision for maintaining the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information, except as provided in this part. Twenty CFR 603.5 provides the exception to the confidentiality requirements. In subsection (c) it provides that a state unemployment insurance agency may disclose "confidential UC information about an employer to that employer." Since

the information that would be provided to the employer is about the claimant and not about the employer, releasing this information to the employer may create some problems. It would be advisable that prior to enacting this legislation a discussion is had with the Department of Labor to ensure that DOL would not view this as a violation of the confidentiality requirements of 20 CFR 603.

Even if the Department of Labor does object to Wisconsin's UI agency releasing the information there may be a few ways to work around this matter:

(1) One option is that many unemployment insurance claimants will soon be required to register on the Job Center of Wisconsin website. When the claimant supplies this information to JCW there may be a way for the employer to search this website to find the former employee's contact information. The one caveat is that a significant percentage of claimants are waived from the work search requirement and, therefore, do not need to register on JCW. Department Proposals are likely to decrease the number of individuals who are granted this waiver.
(2) Another option would be to ask claimants if they are willing to have the Department supply this information to their former employers.

(b) A second issue is that a claimant may have multiple employers who are considered the employee's base period employers and when the claimant is collecting unemployment insurance the unemployment insurance account of multiple employers are impacted. If a claimant was paid wages for covered employment by more than one employer in his/her base period, the liability for benefit payments is prorated. Each employer is then responsible for a percentage of each payment, which is equal to the percentage of the total base period wages paid to the claimant by that employer. Does the proposal envision providing the contact information to only the last employer of the claimant or to all employers who the claimants receipt of unemployment insurance benefits negatively impacts their experience rating?

2) Item # 18 Prisoners Collecting UI

Proposal addresses concern that incarcerated individuals who are working through a work release program and then get transferred to another facility may be unable to get work at the new facility and may then be eligible for unemployment insurance benefits. The proposal addresses the concern by modeling language from a Minnesota statute. Minnesota Statute § 268.035 Subdivision 20 (21) provides that amongst the noncovered work is "employment of an inmate of a custodial or penal institution."

Individuals who are locked up at a county jail and have Huber Privileges may have sufficient base period wages to qualify for unemployment insurance benefits if they lose their job. Wisconsin Statute Section §303.08(1) provides that any person in a county jail for various reasons may be granted the privilege

of leaving the jail in order to seek employment, engage in employment training, or to work.

There are no conformity issues with placement of restrictions on incarcerated individuals being eligible for unemployment insurance. Many states have similar provisions to the one cited above from Minnesota. For instance, Illinois law (820 ILCS 405/211.3 F.) provides that employment shall not include services performed "by an inmate of a custodial or penal institution."

There is one policy question that should be given consideration. The example provided in the write-up is of a prisoner who has work release privileges and then is moved to another prison and is unable to use his work release privileges at the second prison, but still collects unemployment insurance. Yet another possible example may be someone who has work release privileges and then serves his time and is released from prison. If after he is released is it the intent that if he later loses a job, the salary he earned while incarcerated and working at a work release program should or should not count as base period wages for determining his eligibility for and amount of unemployment insurance?

A critical piece will be to ensure that there is data sharing between the Department of Workforce Development and the Department of Corrections to ensure that improper payments are not made to incarcerated individuals. It will be far better to prevent the improper payment to the incarcerated individual rather than attempt to collect an overpayment that results from an improper payment.

3) Item #22 Random UI Search Audits.

Proposal is to expand the random UI work search audits beyond simply auditing those claimants who collect Emergency Unemployment Compensation (EUC08). A question was asked regarding what percentage or how many of EUC08 claimants federal law subjects to random audits with respect to satisfying their UI work search requirements.

Section 4001(h)(2) of the Supplemental Appropriations Act of 2008 requires the Secretary of Labor to establish a minimum number of claims for which work search records must be randomly selected for audit in any given week. States must conduct these audits to ensure that claimants receiving EUC08 are meeting the state's work search requirements.

The number of audits a state must perform is controlled by a formula. The formula provides that a state will audit .5 percent of the total number of paid EUC08 weeks. The resulting samples that each state needs to perform will be between 50 and 1,500 each week. Wisconsin conducted 1,603 audits of

EUC08 claimants from the time-period of September 30, 2012 through November 11, 2012.

For those claims randomly selected, the audit of the EUC recipients' work search must include a review of the claimants' work search activities for the selected week to determine if the claimants met the work search requirements for the week as prescribed by the state. In conducting random audits, a state must attempt to verify at least one work search activity or contact listed by the claimant. Under state law, a state may waive the work search requirement for certain prescribed reasons, such as when individuals are attending approved training. Thus, the federal government requires that if the claimant who is randomly selected has a waiver as a result of approved training, a state should verify that the claimant did in fact participate in the training program.

The main concern with the expansion of this program will be ensuring that the unemployment insurance program has sufficient resources to conduct adequate audits of the work search efforts of regular UI claimants.

The Department already has the legal authority to conduct these audits with respect to regular unemployment insurance benefits. Wisconsin Administrative Code DWD §127.04 (1) provides "The department may require a claimant to present evidence of his or her work search efforts to the department for any time period up to and including the 8-week period prior to the date that the department makes the request. The department may also notify the claimant that evidence will be required for a future week. The department may verify the evidence submitted."

4) Item # 25 Temporary Agency Work Search

In Wisconsin, Administrative Code Chapter 133 provides the special rules related to a temporary help agency and the unemployment insurance program. These provisions deal with temporary help employers and are designed to recognize that the employment relationship between a temporary help employer and the employee is unlike that of other employment relationships. DWD §133.02 (a) provides that the employment relationship between a temporary staffing company and an employee shall continue when an assignment ends, but only under certain circumstances.[1] As a result, there are special rules to

[1] The three requirements to continue the relationship and not have the temporary help agency be responsible for unemployment insurance include:

(1) Either the temporary help agency or the employee must notify the other that the client company is ending or has ended the assignment. Unless there is good cause for non-notification, the notification must occur within two business days of the end of the assignment.

- Out of state
- Out of area?
- Will DWD kno
- Will employer know they're drawing

determine if a temporary help agency's employee will receive unemployment insurance.[2]

Title 56 of the Illinois Department of Economic Security Administrative Rule Section 2865.115 (h) creates a rebuttable presumption that a claimant is not actively seeking work if three circumstances are satisfied:

(a) He or she was last employed by a temporary help firm;
(b) During the week for which benefits were claimed, the individual did not contact the temporary help firm for an assignment; and,
(c) The temporary help firm submits a notice alleging the facts in paragraph (b).

820 ILCS 405/608.04(1)(h)

The presumption is rebutted if the claimant shows that he or she:

(a) Did contact the temporary help firm; or,

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(2) Before the end of the second full business day after the end of the assignment the temporary staffing company must inform the employee that it will provide a new assignment within seven days.
(3) With some exceptions, another requirement is that the date of the new assignment must begin within seven days of the ending of the old assignment.

[2] The following guidelines are applied:

- If the employee fails to contact the temporary help employer by the end of the second full business day after the assignment has ended, and the employer has a known policy requiring the employee to do so and was not aware the assignment had ended, the employee has quit the employment relationship.
- If the employer is aware the assignment ended within the timeframe and does not contact the employee within the timeframe the employment relationship ends due to an employer separation.
- When at the time an assignment ends, the temporary help agency does not have an immediate assignment for the employee, but is able to assure the employee that it will have an assignment within seven days, the employment relationship continues to exist. If for some reason the expected assignment does not materialize within the seven days, but the employer notifies the employee that it will have an assignment within another seven days, the employment relationship is extended for those seven days. An employee who refuses the subsequent assignment is likely to be considered to have voluntarily quit.
- An employee who leaves an assignment before it is completed is generally considered to have quit.
- When an assignment ends and the employer is unable to provide another assignment or assure the employee of another assignment within seven days, the employment relationship is terminated due to lack of work. Likewise, if the temporary help employer is initially able to assure the employee of an assignment within seven days, but is later unable to provide such an assignment, the employment relationship also ends due to a lack of work. Once an employment relation-ship has ended, any later offer of work by the employer would be considered a "new offer of work" and failure to accept such an assignment is regarded as a failure to accept an offer of new work

(b) Had good cause for his or her failure to contact the temporary help firm for an assignment.

The rule provides three examples of what would or would not constitute good cause for failing to contact the temporary help firm.

There are not federal conformity issues with this proposal.

The proposal would likely create additional determinations and may lead to additional hearings due to the fact that the evidence may come down to temporary help firm stating that the employee never contacted it and the employee claiming that he or she did in fact contact the temporary help firm.

Another state that has a similar provision is Missouri. Its provision is contained in its statutes at Missouri Statute § 288.051. In subsection 2. it provides "2. A temporary employee of a temporary help firm will be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment prior to filing for benefits. Failure to contact the temporary help firm will not be deemed a voluntary quit unless the claimant has been advised of the obligation to contact the firm upon completion of assignments and that unemployment benefits may be denied for failure to do so." Requiring the temporary help firm to advise the claimant that failure to contact it after completion of an assignment or risk denial of unemployment insurance benefits may provide some protection against unforeseen legal challenges to the statute.