

Memorandum

To: UIAC Members

From: Scott Sussman, (Attorney BOLA) & Janell Knutson (Director BOLA)

Date: 04/17/2013

Re: Analysis of Legislators' Proposals Contained in April 1, 2013 Letter to UIAC

On April 1, 2013 a group of Wisconsin state legislators sent a series of proposals to the Unemployment Insurance Advisory Council (Council) for its consideration. Below is a brief analysis of these thirty-three proposals. The Department's fiscal analysis of these proposals will be included as a separate document.

Item # 1 Willful Misconduct Disqualification Standard

The legislators' proposal is the original Department proposal D12-01 plus adding an example to the substantial fault of a claimant who refuses to take a drug test that was required by an employer's policy manual. A major aspect of Proposal D12-01 was the creation of a two-tier standard to disqualify claimants from unemployment insurance benefits.

The Department has not identified any federal conformity issues with Department Proposal D12-01. For further analysis, the Department will need to see the actual statutory language with respect to the additional example contained in the legislators' proposal.

Item # 2 Standardized DWD Handbook for Employers

The Department is more than willing to work to create a new handbook for employers. As a preliminary note, the Department already has a handbook for employers. The Department would be willing to work with employers to change and modify this already existing handbook to address their concerns. The deadline for when this new handbook is to be completed would necessarily dictate the extent that the Department would be able to make changes to the existing handbook.

One concern that the Department has is with some of the language within the request section of the letter. The language provides "[t]his will not absolve an employer of their duties during hearings, but could be used as evidence of prior acknowledgment of

Wisconsin law.” At unemployment insurance hearings, under current law lack of prior knowledge of Wisconsin law is not a defense that a claimant may offer as a justification to obtain benefits. Unemployment insurance law like almost all areas of law imputes knowledge of all laws to all persons subject to it. Thus, adding this provision to the Department’s handbook for employees to sign may have little impact on the unemployment insurance system. An alternative might be to add a line for the employee to sign within the Department’s manual to attest that the employee was aware of the employer’s human resource manual and its provisions.

On a related note, unemployment insurance law changes and an employee who signs a standardized DWD handbook today would only be acknowledging that they are familiar with the law as it existed today. The Department would attempt to modify the handbook to stay consistent with changes made by both the federal and the Wisconsin State Legislatures and applicable binding court precedent.

The Department, however, would strongly prefer that the version of this handbook only be required to be placed online to save on printing costs.

Item # 3 Quit Exceptions

The proposal is to adopt all of the provisions in Department proposal D12-19 to eliminate ten of the quit exceptions.

The Unemployment Insurance Advisory Council agreement modified Department proposal D12-19.

Item # 4 Job Search Requirements

The Proposal is to enact Department Proposal D12- 02 and the Council approved it. Proposal D12-02 increases the weekly job search requirement of claimants from two to at least four job search actions.

Item # 5 DWD Overpayments

Department Proposal D12-06 contained this proposal, but the Council at its April 1, 2012 meeting elected to not approve it at this time. Department Proposal D12-06 clarifies and narrows the situations where the law would classify Department actions as department error and thus limits when claimants can keep erroneous overpayments.

Item # 6 SSDI and UI Payments

The Proposal is to enact Department Proposal D12-05 as approved by the Council. Department Proposal D12-05 would prevent a claimant from simultaneously collecting both Social Security Disability Insurance and unemployment insurance benefits.

Item # 7 Pin Numbers

The proposal is to enact Department Proposal D12-03 and the Council approved it. Department Proposal D12-03 ensures that claimants are held responsible for giving out personal information that enables another person to improperly file a claim on their behalf.

Item # 8 Claimant Fails to Provide Information to Department

Department Proposal D12-08 contained this proposal, but the Council at its April 1, 2012 meeting elected to not approve it at this time. Department Proposal D12-08 would suspend benefits if claimants do not provide certain requested information, unless there is good cause for their not providing the information.

Item # 9 Increase Department Collection Abilities

The proposal is to enact Department Proposal D12-10 as approved by the Council. Department Proposal D12-10 would enable the Department to match UI delinquent debtor files against accounts held at WI financial institutions.

Item # 10 Increase Weekly Benefits

The proposal is to enact Department Proposal D12-31 and the Council approved this with one modification. The Council amended the proposal so the minimum amount stays at \$54 per week and claimants whose prior salary only makes them eligible for this amount still receive benefits of \$54 per week.

Item # 11 Amending the Suitable Work Requirement Re-eligibility

If a claimant fails to accept suitable work, he or she is ineligible for benefits unless he or she qualifies again for benefits. Under current law, to again be eligible for benefits four weeks needs to elapse from when the claimant did not accept the suitable work and after not accepting the suitable work the claimant needs to earn wages that are equal to at least four times the employee's weekly benefit rate.

The Legislators' proposal is to enact Department Proposal D12-30 so that the requalification framework would be that a claimant must earn ten times the claimant's weekly benefit rate. The Council approved modification of the law to provide that a claimant must earn six times the claimant's weekly benefit rate.

Item # 12 Increasing Employer's Ability to Reoffer Employment

The proposal would require DWD to provide a claimant's contact information to the employer whose account they are drawing against.

This proposal may violate federal regulations. Twenty CFR § 603.4 (b) provides that state unemployment insurance agencies must maintain "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." Included within confidential information includes the claimant's current (or most recent) home address. Twenty CFR § 603.5 enumerates when the Department may release confidential information including a claimant's current home address. Subsection (c) provides that a state agency may disclose confidential information for non-UC purposes about an individual to that individual, or confidential UC information about an employer to that employer. Providing information to a former employer about the claimant's home address or other contact information is not included in the exception.

Item # 13 Backdate Claims Due to Phone System Down

This proposal is Department Proposal D12-20. The Council at its April 1, 2012 meeting elected to not approve it at this time.

Department Proposal D12-20 provides the Department would no longer backdate claims due to the telephone system being unavailable because claimants may file online. It should also be noted to enact this proposal would not require amending statutory provisions. It only requires the deletion of the provisions of Wis. Admin. Code § DWD 129.01 (4) (e).

Moreover, most claimants will be moving towards the online filing of both their initial and ongoing claims as part of UI modernization. The Department's modernization efforts are modeled after the successful innovation that the Utah unemployment insurance system has used for its program. Utah has achieved an ongoing claims filing rate of over 98% of its claimants. With Wisconsin's unemployment insurance modernization efforts, the Department anticipates a significant increase in the number of claimants that file online and do not use the phone system. As a result, this proposal will not have a significant impact because increasingly claimants will not be using the phone system except in very limited circumstances where they are unable to use a phone to file their claim.

Item # 14 Increase Department Collection Tools

The proposal is to enact Department Proposals D12-10, D12-17, and D12-23 and the Council approved these proposals. These set of proposals would provide the Department collection tools that are used by other state agencies.

Item # 15 Technical Administrative Proposals Impacting Employers

The proposal is to enact Department Proposals D12-04, D12-15, D12-27, and D12-28 and the Council approved these proposals. These proposals are technical improvements that will improve the operation of the unemployment insurance program.

Item # 16 Cafeteria Benefit Plans

The proposal is to enact Department Proposal D12-16 and the Council approved it. Department Proposal D12-16 would make consistent the treatment of cafeteria benefit plan payments by not paying benefits on untaxed wages.

Item # 17 ALJ Reform

The Department is committed to ensuring that Administrative Law Judges (ALJs) have the necessary training and tools to render correct decisions based on applicable laws.

The proposal would require the Department to:

- (1) Mandate training and continuing education for all ALJs; and,
- (2) Create and implement a searchable database of cases to be used by ALJs and select personnel of the Department.

The Department has recently initiated programs to better train and continually educate ALJs.

There are a number of issues that the Department wants to be sure that individuals are aware of related to the portion of the proposal that calls for the creation of the searchable database:

- (a) The number of unemployment insurance cases decided by ALJs is roughly 25,000 per year. To create and maintain a searchable database of all these cases that is accessible by topic would represent a significant resource commitment.
- (b) It may be problematic to include every decision within this database because this would necessarily result in inclusion of decisions that the Department may not want relied upon in future cases heard by other ALJs. With the implementation of this new training program, the Department's objective is to improve the quality of all decisions of ALJs. Still given the volume of annual decisions there is likely to remain some decisions that may be seen as objectionable or overturned by the Labor and Industry Review Commission (LIRC) and that the Department would not want relied upon for future decisions.

(c) Any database would necessarily need to redact personally identifiable information about the employer and claimant in order to avoid privacy considerations. Even if the database were only searchable by other ALJs and Department staff, there would need to be strict security safeguards adopted to ensure that no one improperly used the information contained in the decisions.

(d) A decision by an ALJ is only binding with respect to the litigants who were parties to the administrative hearing. A decision only becomes precedential if the litigants first appeal the decision to the Labor and Industry Review Commission (LIRC) and then appeal the resulting LIRC decision to a circuit court or the court of appeals. LIRC on its website already lists many of its cases that are used as guidance by ALJs. LIRC is the ultimate fact finder and the courts rely upon LIRC's expertise with respect to interpreting unemployment insurance statutes, administrative rules, and policies.

As a result of these concerns, the Department would recommend that the legislation direct LIRC to update its already existing database of decisions and develop a list of commonly decided issues and then for each issue select LIRC decisions to include in a database of searchable cases and redact from these cases any information that would reveal confidential information about the parties to the decision.

Item # 18 Prisoners Collecting UI While on Work Release

The proposal would make a prisoner's work release employment be treated as non-covered employment for purposes of the unemployment insurance program.

Currently, if an inmate incarcerated in a State prison works for an employer (other than the Department of Corrections or a private business leasing space within the prison) and leaves this job because the conditions of incarceration or supervision make it impossible to continue working, the employee is not considered to have voluntarily terminated his employment. If this happens, benefits are charged to the fund's balancing account when the work release employer is a contributing employer. This provision was intended for situations where a prisoner is paroled and is required to reside in a community outside the labor market of the work release employer.

Other states have similar exclusions within their respective laws and the Federal Unemployment Tax Act (26 USC § 3306(c)(21)) excludes from the definition of employment "service performed by a person committed to a penal institution."

It should be important to note that this proposal only impacts prisoners who are collecting unemployment insurance while on work release and does not impact individuals who are incarcerated in county jails and have Huber privileges.

Item # 19 Online Employer Complaint System

The proposal is to require the Department to create an online portal for employers to log in and file complaints in addition to other methods already available.

The Department currently has a number of ways that employers may contact the Department. These include:

- The ability to report unemployment fraud either through an online email web form or through calling the toll free number at 800-909-9472;
- The Department has also created electronic methods for employers to be able to electronically report information pertaining to any separation by an employer;
- The Department also has telephone numbers dedicated to provide assistance for employers; and,
- Specific telephone numbers and email addresses that are listed on the web to receive assistance for specific topics that may be of interest to employers, such as assistance with understanding tax rates.

The Department is always looking to streamline and improve and make more user-friendly its system to enable employers and claimants to raise concerns about the unemployment insurance program.

Item # 20 FUTA Tax Credit Payoff Guarantee

The proposal would authorize the Department of Administration to loan general purpose revenue (GPR) money of no more than \$50 million to the UI trust fund to ensure solvency on November 9, 2014. The purpose behind the loan would be to avoid a FUTA credit reduction on Wisconsin employers.

As a preliminary matter it is important to note there is no guarantee that a time-frame could be guaranteed for repayment of this loan. A lot will depend on the state of the economy, but it will likely not occur until April of 2015 based on current projections.

It is also important to note that Unemployment Insurance Program Letter 07-04 provides the skeletal framework of the Department of Labor's position with respect to such loans. 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.
- 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.

c. The loan and repayment are consistent with the state law as interpreted by competent state authority.

This UIPL specifically also states “[u]nemployment fund money may not be used to pay interest, loan/bond fees, or other administrative costs.”

It will be necessary to consult with officials at the Department of Labor to ensure that Wisconsin is taking all necessary steps to avoid the FUTA credit reduction if it uses GPR money to make a loan to the unemployment trust fund. Additionally, consultation with officials in South Carolina would also be a prudent step to be taken with respect to this matter. In FY2011, South Carolina was the only state with outstanding advances on their federal loan to take necessary steps to ensure employers in South Carolina were not subject to a state tax credit reduction in the calculation of their FUTA taxes. While the situation is not completely analogous it would not hurt to, if possible, talk with South Carolina officials about their steps and the adoption of South Carolina Code § 41-31-45, which appears to be the statutory authority that enabled South Carolina to avoid the FUTA credit reduction.

Prior to adopting any legislation with respect to this matter, the Department would need to consult with Department of Labor officials to ensure that the proposed legislation would enable the Department to follow all federal requirements and avoid any unintended consequences including additional FUTA credit reductions.

Item # 21 Reporting of Individual Business Reserve Fund Balance

The proposal would require the Department to clarify and provide definitions to define how an employer’s reserve fund balance operates.

The Department understands that many employers are confused over how their reserve fund balance operates. The Department is committed to assisting employers to understand the unemployment insurance system better in general and, in particular, explaining how an employer’s reserve fund balance operates. The Department will also ensure that this information is prominently displayed within its website.

The Department would also mail to new employers explanatory information regarding how the unemployment insurance system works and include an explanation about how an employer’s reserve fund balance operates.

Item # 22 Random UI Search Audits

The *Middle Class Tax Relief and Job Creation Act of 2012* requires each state to conduct random audits of the work search efforts of Emergency Unemployment Compensation (EUC08) claimants. The proposal is to expand the random UI work search audits beyond simply auditing those claimants who are collecting 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.

The Secretary of Labor is directed 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 particular state's work search requirements.

The number of audits a state must perform is controlled by a formula. The formula provides that states must conduct random audits on a pool of claimants of pre-defined size: 0.5 percent of all weeks paid in any Tier of the EUC program, with a minimum number of 50 and a maximum of number of 1,500, for any given 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 claimant's work search activities for the selected week to determine if the claimant satisfied 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 "[t]he 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."

The number of regular unemployment insurance claimants varies weekly and is greatly influenced by the health or weakness of the economy. Additionally, the reforms that have already been approved by the Council, with the support of the Legislature, will likely decrease the number of waivers that individuals receive from the work-search requirements for unemployment insurance claimants and also increase the weekly number of work search activities that must be conducted by a claimant. Given these parameters, the potential number of audits for regular UI claimants could result in over

400 audits a week if the Department used the same percentage mandated by the federal government for EUC08 claimants. The Department estimates that it would require significant additional full-time staff to accomplish the objective of conducting thorough audits.

Item # 23 Timing of Required Department Reports

This proposal requests to provide the Department greater flexibility with various reports provided to the Legislature by spacing out the required statutory deadlines.

The statute currently requires the Department to provide three reports that are forwarded onto the Legislature:

- Pursuant to s. 108.141 (19) of the Wisconsin Statute, the Department is to prepare and furnish a report summarizing the Department's activities related to detection and prosecution of unemployment insurance fraud. The Department would recommend that this report be due by March 15.
- Pursuant to s. 16.48 of the Wisconsin Statute, on a biennial basis the Department shall prepare and furnish to the governor and leaders of both houses of the Wisconsin Legislature the unemployment insurance financial outlook. The Department would recommend that this report be due biennially on April 15.
- Pursuant to s. 16.48 (1) (b) of the Wisconsin Statute, biennially the Department shall prepare and furnish to the governor and leaders of both houses of the Wisconsin Legislature a report summarizing the activities of the Council. While this report is tied into the above referenced financial outlook report, the Department would recommend that this report be due biennially on May 15.

Item # 24 Extended Training Benefits

Currently, a claimant may qualify to receive benefits while participating in an extended training program under certain conditions including, but not limited to, he or she has exhausted all other rights to all other unemployment insurance benefits. This proposal would repeal extended training benefits. There is no federal conformity issue with eliminating the right for a claimant to not receive benefits while participating in an extended training program.

Wisconsin enacted extended training benefits as one of the conditions to satisfy in order to be eligible for unemployment compensation modernization incentive payments. The total amount available for all states through this program was \$7 billion. To obtain its share, a state had to make an application to the Department of Labor demonstrating that its UC law contains certain benefit eligibility provisions. Unemployment Insurance Program Letter No. 14-09 provided that applications for incentive payments should only be made under provisions of state laws that are currently in effect as permanent law and not subject to discontinuation.

UIPL No. 14-09 included an attachment that provided answers to a series of questions. This provides that a state agency may discontinue a program that was funded to obtain the UC modernization funding.¹

Item # 25 Temporary Agency Work Search

The proposal provides if a claimant's last employer was a "temporary help company" or the claimant is drawing against the account of a temporary help company the claimant must weekly contact the temporary help company seeking an assignment. Otherwise, the claimant is considered to not have conducted a reasonable search for suitable work. The only exception would be if there is good cause for the failure of the claimant to contact the employer.

The Department has not identified any federal conformity issues with this proposal, but the proposal has raised a few issues:

- (a) While perhaps not appropriate for statute, it would be good to further clarification regarding what constitutes good cause for failing to contact a temporary help agency. This would help to avoid confusion with application of this policy.
- (b) There likely should be some limitation placed on the length of time that a temporary help firm could call the Department and state that the claimant did not contact it seeking an assignment. Otherwise, there will likely be issues with respect to each side being able to provide evidence to support their contention that the claimant did or did not contact the temporary help agency for a particular week.
- (c) There may need to be some additional requirements placed on temporary help firms if they elect to use this provision to disqualify former clients from unemployment insurance benefits. The main requirement would be that temporary help firms must have employees, upon hire, sign a written agreement with the temporary help agency stating that when an assignment ends they are required by UI (if filing) to contact the agency at least once a week for further assignments.

¹ One of those questions provided:

CH 1-1. Question. UIPL No. 14-09 provides that applications for incentive payments should only be made under provisions of state laws that are currently in effect *as permanent law* and not subject to discontinuation. Does this mean that my state may never repeal any of the provisions that qualified it for a UC Modernization payment?

Answer: No. If a state eventually decides to repeal or modify any of these provisions, it may do so, and it will not be required to return any incentive payments. However, in providing the incentive payments, Congress clearly intended to support states that had already adopted certain eligibility provisions and to expand eligibility to additional beneficiaries by encouraging other states to adopt these provisions. By specifying that the provisions must be in effect as permanent law, Congress also made clear its intention that the benefit expansions not be transitory. While states are free to change or repeal the provisions on which modernization payments were based subsequent to receipt of incentive payments, Congress and the Department rely on states' good faith in adopting the eligibility criteria, and the application must attest to this good faith as required by the following Q&A.

(d) Many claimants have multiple employers that work for them was part of their base period wages. Similar laws from other states only require a claimant to contact the temporary help agency if it was the last company that hired the claimant. It would significantly increase the complexity of implementing and administering this proposal if a claimant had to contact a temporary help firm even if that firm was not the claimant's last company that the claimant worked for.

(e) It would be important to have the temporary help firm be required to submit a notice of possible ineligibility if during a particular week in which a former claimant claimed benefits; the claimant fails to contact them for an assignment. Otherwise, there will be substantial administrative costs and programming issues associated with this proposal.

Item # 26 Standardized Witness Forms for Employers

The proposal would require the Department to create a standardized sworn affidavit witness form for hearings to enable businesses to properly document an incident related to an employee that would be presumed admissible during hearings. The proposal notes that the sworn affidavit should not absolve an employer of their duties during hearings and that the affidavits should provide any necessary legal disclaimers.

These caveats are extremely important to the proposal. The Department of Labor (DOL) addresses the use of affidavits and unsworn statements in unemployment insurance hearings. While DOL acknowledges that appeal tribunals in UI hearings may accept affidavits and even unsworn statements in lieu of oral testimony. Yet, if that witness is available, he or she should be required to appear and give testimony orally and under oath. In fact, the more material the evidence is to the issue of the hearing, the more important it is to obtain oral, sworn testimony. The DOL also notes that, where the facts are material and the issue is in dispute; procedural fairness may require that the witness be called before the appeal tribunal for cross examination.

In addition, cross examination of a witness is a critical fair hearing and due process element for an administrative hearing. The opportunity to cross examine is a fundamental right in the eyes of the legal system. Through questioning of the witness contradictions, improbabilities, and doubts about the testimony or evidence can result.

It also is important to note the Wisconsin Supreme Court case, *Gehin v. Wisconsin Group Insurance Board*, addressed this issue. The Court held that an administrative tribunal may admit hearsay evidence, but uncorroborated hearsay alone does not constitute substantial evidence. The rule prohibits an administrative agency from relying solely on uncorroborated hearsay in reaching its decision.

There are two additional issues:

- First, the Department to promote fairness would recommend that standardized sworn affidavit witness forms be available to both employers and claimants; and,

- Second, many of the procedures associated with appeal tribunal hearings are contained in Administrative Code DWD Chapter 140 and it would be logical to place this requirement within Chapter 140. Nonetheless, Wisconsin statute §108.09(4o) does provide an analogous statute related to the admissibility of Departmental Records relating to benefit claims.

Item # 27 SAFI Reimbursement for Businesses

The Federal Unemployment Account provides for a loan fund for state unemployment programs to ensure a continued flow of benefits during times of economic downturn. Wisconsin is one of the states that has taken out a loan to pay benefits. The proposal provides \$19 million in 2013 and \$7 million in 2014 of GPR to pay the interest owed on the federal loan and avoid businesses having to pay a Special Assessment For Interest.

The Department has not identified any federal conformity issues with this proposal.

Item # 28 Treatment of Legal Holidays for UI

The proposal would consider all State and Federal legal holidays as non-working days for the purpose of Unemployment Insurance, but only if in the normal course of business the claimant works for an employer whose business is closed.

The Department has not identified any federal conformity issues with this proposal.

The Department assumes that the intent of this proposal is to modify the provisions of Wisconsin Statute s. 108.05 (3) (b). This currently requires denial of benefits for any week in which a claimant is paid or has the opportunity to earn pay for full-time work (32 hours) from any combination of the following: actual work performed, sick pay, holiday pay, vacation pay or dismissal pay. The proposal would change this disqualification provision to provide that in any week in which there is a holiday and the claimant works at a business that in the normal course of business is closed the 32 hour rule would be modified to 24 hours. Additionally, the proposal would change the disqualification provision to provide that if in any week there are two days that are holidays and the claimant works at a business that in the normal course of business is closed the 32 hour rule would be modified to 16 hours.

It will be necessary to determine what days qualify as “holidays” for purposes of this proposal. It would also be advantageous if employers who desired to use this provision with respect to their employees be required to notify the Department prior to the beginning of every calendar year of the fact that in the normal course of business they are closed on certain holidays covered by this provision. This would help to avoid delays of payment of unemployment insurance or avoid the creation of overpayments.

Item # 29 Employer Notification of Work Search

The proposal would require the Department to allow an employer to sign up to receive an electronic notification if a claimant listed that employer as an employer that they applied to as part of their weekly job search efforts.

This proposal may violate federal regulations. Twenty CFR § 603.4 (b) provides that state unemployment insurance agencies must maintain “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.” Thus, telling an employer that an individual who applied for a job and that individual is receiving unemployment insurance, may be a violation of federal regulations.

Item # 30 Link Eligibility Weeks to Unemployment Rate

The proposal would amend Wisconsin's unemployment compensation law to reduce benefit duration from a maximum of 26 weeks to a lesser number of weeks depending on the state's seasonally adjusted unemployment rate. The proposal would provide:

Unemployment Rate	Weeks of Eligibility
8% or higher	26 weeks
7.5 - 7.99%	24 weeks
7 - 7.49%	22 weeks
6.5 - 6.99%	20 weeks
6 - 6.49%	18 weeks
5.5 - 5.99%	16 weeks
5 - 5.49%	14 weeks
4.99% or less	12 weeks

Below is a chart providing what the average duration for individuals who were on regular unemployment insurance from 2007 – 2011 and under the proposal what would be the maximum duration that an individual would have been eligible for regular unemployment insurance:

Year	WI Average Total Unemployment Rate for Applicable Year	Average Duration of Receipt of Regular Unemployment Insurance (In Weeks)	Under Proposal, Allowable Duration Based on Average Unemployment Rate for Applicable Year (In Weeks)
2007	4.8	13.2	12
2008	4.8	13.2	12
2009	8.7	17.0	26
2010	8.5	17.8	26
2011	7.5	16.2	24

The duration measure is only for Regular UI and does not include any special programs, such as Emergency Unemployment Compensation (EUC08). It is important to note that the average total unemployment rates listed in the second column represent the total unemployment rate for an entire year. Florida, which has enacted a similar reduction in duration, determines the number of weeks a claimant is eligible for based on state's unemployment rate during the third quarter of the previous calendar year.

The reduced duration does not raise a conformity issue, but it does affect the amount of extended benefits available under state law. Additionally, a reduction in duration would affect benefits under EUC08 law of 2008. A discussion follows.

There is no requirement in the Federal Unemployment Tax Act (FUTA) or Title III of the Social Security Act (SSA) that a state UC law provide for the payment of a specified number of weeks of UC to be certified as eligible for FUTA tax credits or the UC administrative grant under Title III, SSA. Although there are some variations, most state UC laws provide for the payment of a maximum of 26 weeks of UC even though this amount is not specified in FUTA or the SSA. Some states have variable duration formulas where the number of weeks of benefits an individual is eligible to receive varies based upon the amount of earnings in the base period. While reducing the duration of benefits from 26 weeks does not raise a conformity issue, it results in reduced payments of extended benefits if the reduced duration for regular unemployment insurance is effective during weeks of unemployment when an extended benefit program is operational.

The payment of EUC08, which has been extended several times, is based, in part, on the unemployment rate in a state and the amount of regular compensation an individual receives. EUC08 is paid in a series of tiers and the individual must exhaust all rights to regular UC before being eligible for EUC08.

EUC08 is a 100% federally funded program that provides benefits to individuals who have exhausted regular state benefits. The EUC08 program was created on June 30, 2008, and has

been modified several times. These benefits are available for weeks of unemployment ending on or before January 1, 2014. This means that the last payable week of EUC08 benefits in most states will be the week ending December 28, 2013, unless Congress again extends this program.

The Department estimates that this proposal will have the following impacts with respect to federal benefits:

Weeks of Eligibility of Different UI Special Extended Programs Under Proposed Law Change*						
Unemployment Rate	Regular UI	Current Law EUC Durations				EB Weeks
		EUC Tier 1	EUC Tier 2	EUC Tier 3	EUC Tier 4	
8% or higher (Duration Under Current Law)	26	14	14	9	10	13
7.50% - 7.99%	24	13	13	8	N/A**	12
7.0%-7.49%	22	12	12	8	N/A**	11
6.50%-6.99%	20	11	11	N/A**	N/A**	10
6.0%-6.49%	18	10	10	N/A**	N/A**	9
5.5%-5.99%	16	9	N/A**	N/A**	N/A**	8
5.0%-5.49%	14	8	N/A**	N/A**	N/A**	7
Less than 4.99%	12	6	N/A**	N/A**	N/A**	6

* The chart assumes that this proposal is enacted before the end of this year due to fact that the last payable week of EUC08 benefits in most states will be the week ending December 28, 2013, unless Congress again extends this program.

**Except for Tier 1 of EUC08, each Tier has an on and off trigger based on a state's 3-month seasonally adjusted total unemployment rate. For instance, claimants in a state with a 3-month seasonally adjusted total unemployment rate of less than 7% would be ineligible for EUC08 Tier 3. Thus, the chart only shows the impact on the duration for a EUC08 Tier if at the applicable unemployment rate Wisconsin claimants would be eligible for that EUC08 Tier.

Item # 31 Increase Lowest Reserve Percent

This proposal would increase the lowest rate percent from -6% and create a -6%, -7%, and -8% and more tiers. Additionally, it would increase the corresponding rates to a schedule A max of 12% total.

The proposal would strengthen experience rating of the Trust Fund, by assigning employer experience rates based solely on the statutory rate schedules, without any special limitations. Experience rating is a federal mandate and represents the core of the Trust Fund's rate structure. Placing limits on tax rates undermines experience rating and results in subsidization of certain employers with high unemployment experience by those with low unemployment experience.

The Expected Tax Revenue Increase Due to Increasing the Maximum Total Tax Rate to 12%

The UI Tax schedule was changed to increase the maximum Total Tax Revenue rate from 9.8% to 12%. This was done by adding additional brackets at the bottom of the schedule. Over these brackets the Basic Tax Rate was increased while the Solvency Tax Rate was held constant at 1.3%.

Current Rate			
	Basic Rate	Solvency Rate	Total Rate
Less than - 6.0%	8.5	1.3	9.8
New Rates			
	Basic Rate	Solvency Rate	Total Rate
-6.0% to 7.0%	8.5	1.3	9.8
-7.0% to -8.0%	9.25	1.3	10.55
-8.0% to -9.0%	10.0	1.3	11.3
-9.0% to -10.0%	10.7	1.3	12

The new tax rates were used in the tax model simulation to determine the expected change in tax revenue over the current rates. On average the change in tax rates would increase tax revenue by \$24 million per year. This result holds when the model is simulated under Tax Schedule A until 2018 or if Tax Schedule B is in place for the years 2017 and 2018.

		Tax Revenue (Millions)		
	Tax Schedule	Current Tax Schedule	New Tax Schedule	Difference In Revenue
Year				
2014	A	\$1,089	\$1,121	\$32
2015	A	\$1,001	\$1,030	\$29
2016	A	\$981	\$1,005	\$24
2017	A	\$958	\$975	\$17
2018	A	\$911	\$929	\$18
			Average Difference	\$24

		Tax Revenue (Millions)		
	Tax Schedule	Current Tax Schedule	New Tax Schedule	Difference In Revenue
Year				
2014	A	\$1,089	\$1,121	\$32
2015	A	\$1,001	\$1,030	\$29
2016	A	\$981	\$1,005	\$24
2017	B	\$854	\$871	\$17
2018	B	\$785	\$804	\$19
			Average Difference	\$24

Item # 32 Increase Fraud Workers

The proposal would create three additional FTE positions for fraud investigation and encourage the Department to create more positions if the Department can leverage additional federal dollars.

The Department is committed to preventing fraud and supports the additional resources called for within this proposal. The Department is also committed to leveraging additional Federal dollars if they become available for additional resources to pay for fraud investigators.

The Department estimates that the total annual cost for 3 FTE Fraud Investigators would be \$314,560. This position calculation uses the Department standard for identifying all costs, direct and allocated, for maintaining an FTE.

Item # 33 Lost Licenses

The proposal would accomplish three objectives:

- (a) Tighten up the standard for determining when an employee is at fault for the loss of his or her license that is necessary for him or her to perform his or her job;
- (b) Provide that the requalification standard for an employee who loses his or her license is six times the weekly benefit rate.
- (c) Provide that if an employee loses his or her license that is necessary for him or her to perform his or her job, the impact would be similar on the wage base as is done in cases of misconduct.

The Department has not identified any federal conformity issues with this proposal.

Below is a written explanation of the current legal framework for what is the impact on receipt of unemployment insurance benefits when an individual becomes unemployed as a result of losing a license that was necessary for the individual to perform a job.

Pursuant to section 108.04 (1) (f) of the Wisconsin Statute, the Department policy currently is that benefits are denied if the employment relationship was suspended or terminated because the employee's license that was issued by a government agency and was required to do his job was suspended, revoked or not renewed due to the employee's fault. If the employee loses a license for a reason that is beyond the employee's control, it will not result in suspension of benefits under this subsection. As an example, if an employee loses the license due to the fact that he or she is unable to pass an exam or satisfy physical requirements.

Benefits are denied for the week of issue plus five weeks or until the license is renewed or reinstated, whichever comes first.

If the license is not renewed or reinstated by the end of the 6-week suspension period:

- Wages from the issue employer are removed for the purpose of determining the maximum benefit amount. The wages are still used for benefit rate purposes.
- If there are no other base period employers the employee is not eligible for benefits until the license has been renewed or reinstated.
- If there are other base period employers the employee is eligible for benefits based on the other wages. The issue employer is not charged for its percentage of benefit payments while the loss of license exists.