



Unemployment Insurance Advisory Council

Council Members: Please bring your calendars to schedule future meetings.
<https://dwd.wisconsin.gov/uibola/uiac/>

MEETING

Date: June 20, 2019
Time: 10:00 a.m. – 4:00 p.m.
Place: Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room F305

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the May 22, 2019 Council Meeting
3. Department Update
4. Brief Update on the Unemployment Insurance Reserve Fund
5. Program Integrity Assessment
6. Department Proposals for Agreed Bill
7. Labor and Management Proposals for Agreed Bill
8. Agreed Bill Timeline
9. Future Meeting Dates
10. Adjourn

Notice:

- ❖ The Council may not address all agenda items or follow the agenda order.
- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may discuss other items, including those on any attached lists.
- ❖ The Council members may attend the meeting by telephone.
- ❖ The employee or employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items posted in this agenda, under sec. 19.85(1)(ee), Stats. The employee or employer members of the Council may thereafter reconvene again in open session after completion of the closed session.
- ❖ This location is accessible to persons with disabilities. If you have a disability and need assistance (such as an interpreter or information in an alternate format), please contact Robin Gallagher, Unemployment Insurance Division, at 608-267-1405 or dial 7-1-1 for Wisconsin Relay Service.
- ❖ Today's meeting materials will be available online at 10:00 a.m. at <https://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 E. Washington Avenue, GEF 1, Room F305
Madison, WI

May 22, 2019

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members Present: Janell Knutson (Chair), Scott Manley, Susan Quam, Mike Gotzler, John Mielke, Earl Gustafson, Di Ann Fechter, Sally Feistel, Dennis Delie, and Terry Hayden.

Department Staff Present: Mark Reihl (UI Division Administrator), Amy Banicki, Andrew Rubsam, Jim Moe, Jennifer Wakerhauser (DWD Deputy Legal Counsel), Mike Myszewski, Patrick Lonergan, Tom McHugh, Pam James, Jill Moksouphanh, Robert Usarek, Emily Savard, Ryan Farrell, Karen Schultz, Tom Mund, Maureen McShane and Robin Gallagher.

Members of the Public Present: Brian Dake (Wis. Independent Businesses, Inc.), Victor Forberger (Wisconsin UI Clinic), Mike Duchek (Legislative Reference Bureau), Representative Michael Schraa (Assembly District 53), and Linda Palmer (Office of Representative Schraa).

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:02 a.m. under Wisconsin's Open Meetings law. Council members introduced themselves and Ms. Knutson recognized Mike Duchek of the Legislative Reference Bureau (LRB) and DWD Deputy Legal Counsel Jennifer Wakerhauser.

2. Approval of Minutes of the April 18, 2019 Meeting

Ms. Knutson stated the draft minutes of the April 18, 2019 meeting sent in advance to the Council Members were corrected due to a typographical error on page 6 (paragraph 3). The sentence now reads:

"Ms. Knutson presented the projected fiscal impact for D19-16 (Repeal Waiting Week) and D19-18 (Increase Maximum Weekly Benefit Rate to \$406)...."

Motion by Mr. Manley, second by Mr. Gotzler to approve the meeting minutes as corrected. The motion carried unanimously.

3. Worker Misclassification Quarterly Report

Mr. Myszewski reported on the activities of the Worker Classification Section that included the following:

- 178 investigations have been conducted since January 1, 2019.
- 2,343 worker classification investigations have been conducted since the worker misclassification project was initiated in May 2013.
- Approximately 62% of investigations involve the construction industry.
- 7,132 workers have been reclassified as a result of the investigations conducted since the project was initiated.
- UI tax and interest totaling \$2,437,051 has been assessed since the beginning of the project in May 2013. The average amount of assessed tax and interest is \$341.70 per worker reclassified as an employee.
- To date, administrative penalties have been issued in eight cases for intentional worker misclassification.
- Since the project began, 549 investigations have resulted in referrals to the Department's field audit section.
- The Worker Classification Section is investigating the child care industry due to the number of 1099 tax forms issued. These investigations started in winter 2018 and are expected to conclude by the end of the summer.
- During field audits, \$71,500,509 of gross wages and \$46,421,655 of taxable wages were audited.

The Worker Classification Section currently consists of four full-time employees and two part-time employees. Investigations are conducted based on complaints received by the department, and referrals by field audit investigations; however, the majority of investigations are self-initiated based on the number of tax form 1099s issued in a certain industry or going to a building inspection office and requesting information on local projects.

4. Department Update

Mr. Reihl announced new UI Bureau of Benefits Director Jason Schunk. Mr. Schunk has over 15 years of UI experience, bringing a wealth of knowledge and experience to the position. Ms. Banicki was the previous Bureau Director and is now the UI Deputy Administrator.

Ms. Knutson reported on the following:

- The 2017-18 UIAC Activities Report was delivered to the Governor and Legislature and is included in today's Council packet. The report is also posted on the department's website for public access.
- The Scope Statement for chs. DWD 102 and 147 (changing SIC to NAICS codes) is still awaiting the Governor's approval.
- The administrative rule on minor and technical changes to the UI program has been adopted and will be effective June 1, 2019.

5. UI Reserve Fund Update

Mr. McHugh reported on the UI Reserve Fund highlights. Benefit payments through April 2019 declined by \$13 million (6.7%) when compared to benefits paid through April 2018. Although payroll increased slightly, tax receipts through April 2019 declined \$23.9 million (6.7%) when compared to taxes paid through April 2018. Schedule D was in effect for both 2018 and 2019; therefore, the decrease in tax receipts reflects the improvement of individual employers' tax rates.

The Trust Fund balance through April 2019 increased by 15.1% with an ending, historically high, balance of \$1.9 billion. A balance in the Trust Fund of \$1.2 billion on June 30 will result in Schedule D continuing to be in effect for 2020.

Interest earned on the Trust Fund is received quarterly and \$10.1 million was received in the first quarter of 2019, an increase of \$2 million compared to the first quarter in 2018. The U.S. Treasury annualized interest rate for this quarter is 2.4%, resulting in the Trust Fund earning approximately \$124,000 in daily interest. It is anticipated the Trust Fund will earn \$46 million in interest in 2019.

Mr. McHugh stated the Wisconsin Legislative Audit Bureau (LAB) published the UI audit for fiscal years 2017-18 and 2016-17. All banking operations and accounting is done at the department and is not part of the state's accounting system. The department received an unmodified opinion and no findings of deficiencies were detected in the audit. The department started voluntarily participating in the LAB audit every two years since the 1970s when the department received a bad audit when all money could not be accounted for. The audit ensures money flowing through the benefit and tax systems and into accounting records are accurate. Mr. Reihl extended his gratitude for the great work done by department staff.

6. Financial Outlook Report

Mr. Usarek presented the 2019 Financial Outlook report of Wisconsin's UI program. The report outlines the review of recent Trust Fund activity, Trust Fund projections and long-run simulations. The report was submitted to the Governor on April 15 as prescribed by statute. Mr. Usarek reported on the following:

- The Trust Fund has increased over the past two years due to historically low UI benefit payments. At the end of 2016, the Trust Fund balance was \$1.159 billion and at the end of 2018, the Trust Fund balance was \$1.731 billion.
- The average UI benefit payments as a percentage of total payroll of taxable employers between 1976 and 2018 is 1.14%. In 2018, UI benefit payments as a percentage of total payroll was .36%, the lowest percentage since 1951.
- UI taxes as a percentage of total payroll of taxable employers from 1976 to 2018 averaged 1.11% and in 2018, was at a historic low of 0.54% (dating back to 1938). Total payroll of taxable employers has recently increased approximately 2% per year due to increased wages and employment growth.

Since the end of the recession, the department has been in uncharted territory with historically low benefit payments. To illustrate the uncertainty regarding UI benefit payment levels, two different projections are reviewed assuming moderate economic growth: UI benefit payments remain at current historically low levels, and UI benefit payments return to typical levels. To illustrate cyclical economic risk, projections are reviewed assuming UI benefit payments under a recession in 2020.

If UI benefit payments remain at historically low levels relative to the unemployment rate, UI benefit payments increase to \$492 million in 2022 (up from \$377 million in 2018) and the Trust Fund balance will increase to \$2.091 billion in 2022 (up from \$1.731 billion in 2018).

If UI benefit payments increase to typical levels of a .55 ratio of insured unemployment to total unemployment, UI benefit payments would increase to \$712 million in 2022 and the Trust Fund balance would decrease to \$1.488 billion.

Assuming the U.S. enters a mild recession in 2020, benefit payments would increase to \$1.174 billion in 2022 and the Trust Fund balance would decrease to \$483 million. During times of mild recessions, higher benefit payments typically extend 18 to 24 months past the actual recession year.

For long-run simulations:

- Assuming historically low UI benefit levels, UI benefit payments will be greater than the amount of UI taxes paid by employers in 2021 and maintain a slight lead through 2027.
- Assuming UI benefit payments increase to typical levels, UI benefit payments will be greater than UI taxes paid by employers in 2019. This will result in a sharp decline in the Trust Fund balance through 2027.
- Assuming the U.S. enters a mild recession in 2020, there will be a rapid decline in the Trust Fund as a percentage of total payroll beginning in 2020 and will continue to decline until 2026, at which time it is expected to slowly increase. UI benefit payments will exceed the amount of UI taxes paid by employers in 2020. It is estimated UI taxes paid by employers will exceed the amount of UI benefits paid in 2025.

Based on the financial outlook report, the Secretary is recommending the UIAC review all relevant factors and provide the Governor and Legislature proposed solutions to further strengthen the UI Trust Fund. These solutions could include adjusting the UI tax schedule trigger to account for a substantially larger Wisconsin economy, adjusting the UI taxable wage base to reflect growth in wages since the last increase, or deeper changes in the underlying reserve balance system and tax schedules.

7. Update on Legislation

Ms. Knutson stated Senate Bill 213, relating to the income tax exemption for cash tips received by an employee from the customers of the employee's employer, has been introduced and referred to the Agriculture, Revenue and Financial Institutions Committee. Although the bill

does not amend Wis. Stat. Ch. 108, if passed, the department would inform employers and claimants that the reporting requirements for UI are not impacted by the bill to avoid confusion.

Assembly Bill 220, relating to recreational and medical use of marijuana, has been referred to the Criminal Justice and Public Safety Committee. AB 220 would impact Wis. Stat. Ch. 108 regarding misconduct, substantial fault and drug testing. Mr. Rubsam stated the department was asked to provide a fiscal estimate. The provisions of this bill that would impact Wis. Stat. Ch. 108 are primarily related to the definitions of misconduct and substantial fault for discharges. Terminations for misconduct or substantial fault under this bill would be based on if the claimant was intoxicated while on the job, not if the claimant used marijuana recreationally. Because this would result in more claimants qualifying for benefits, a negative impact to the Trust Fund is expected, although minor. Marijuana would also need to be excluded when the department conducts drug testing. Ms. Knutson stated the fiscal estimate is expected to be completed and sent to the Legislature soon.

Mr. Rubsam reported that the Federal EQUIP Act, which was also introduced last session, would modify the provisions of UI drug testing. Under current law, states can only drug test applicants for benefits if their only suitable work is in an occupation that regularly conducts drug testing. Because USDOL has not issued any final drug testing rules, states are not permitted to drug test those claimants. This bill would permit, but not require, states to screen all claimants to determine their risk of substance abuse. If it is determined the risk is high, states can drug test the individual. If the individual fails the drug test, the individual would be ineligible for benefits for the first 30 days. If the individual fails a second drug test, the individual may be found ineligible for benefits the rest of the benefit year. The bill will also permit states to conduct drug tests on claimants throughout their benefit year. The department does not anticipate any movement on this bill this session in Congress.

8. Research Requests

Ms. Knutson reported there are no pending research requests at this time.

9. Correspondence

The department received a letter regarding the one-week waiting period and the maximum weekly benefit rate from Mr. James Balzer. A copy of that letter and the department's response on behalf of the Council was provided. The department's response indicated the comments would be provided to the Council for consideration.

10. Department Proposals for Agreed Bill

Ms. Knutson reported there were no additional department proposals to present to the Council at this time. A chart summarizing the department proposals and the status of each proposal is included in the Council packet. Ms. Knutson requested that the Council provide feedback or approval on the department proposals by the end of today's meeting.

11. Labor and Management Proposals for Agreed Bill

Ms. Knutson inquired about the Council's preparedness to exchange proposals at today's meeting.

12. Agreed Bill Timeline

Ms. Knutson presented an updated Agreed Bill Timeline to include a possible additional meeting in June to keep the Council on schedule and avoid a December meeting.

13. Future Meeting Dates

The next scheduled Council meeting is June 20. A poll conducted by the department on scheduling an additional meeting in June revealed three potential dates (June 3, June 10 and June 11). The department is requesting the Council consider an additional June meeting and provide input by the end of today's meeting.

Caucus

Motion by Mr. Hayden, second by Mr. Manley, to adjourn to closed caucus under Wis. Stat. § 19.85(1)(ee), to deliberate items on the agenda and report back after caucus. The motion carried unanimously, and the Council adjourned to closed caucus at 10:55 a.m.

The Council reconvened at 1:27 p.m. Mr. Manley reported there is no agreement on department proposals D19-02, and D19-11 through D19-18. Management Members are continuing to work on the other department proposals. Mr. Manley stated that their respective associations are still reviewing the approximately six management proposals that they intend to exchange with Labor Members at the June meeting. It is the intent of the Management Members to discuss the remaining department proposals and the Labor Member proposals at the June meeting.

Mr. Hayden reported that Labor Members prefer to add an additional meeting later in the process or have back-to-back meetings if necessary, rather than schedule an additional June meeting. Mr. Hayden requested a very light business agenda at the June meeting as Labor Members will be prepared to exchange proposals with Management Members at that time. Mr. Hayden reported Labor Members will continue their review of department proposals.

Ms. Knutson stated the department is available for any research or information requests to assist the Council when reviewing department proposals and preparing their own.

14. Adjourn

Motion by Ms. Feistel, second by Ms. Quam to adjourn. The motion carried unanimously, and the Council adjourned at 1:33 p.m.

UI Reserve Fund Highlights

June 20, 2019

1. The May 2019 Trust Fund ending balance was \$1.8 billion, an increase of \$247.9 million when compared to the same time last year.
2. With the passage of Wis. Stat. §108.155, effective October 2, 2016, two million dollars was set aside in the balancing account to cover identity theft charges against reimbursable employer's accounts. To date, there have been \$1,443 charges against this amount, and the balance on the account is \$2,115,424. The increase in the account's value is attributable to interest earned.

FINANCIAL STATEMENTS

For the Month Ended May 31, 2019



Division of Unemployment Insurance

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED May 31, 2019

	CURRENT YEAR	PRIOR YEAR
<u>ASSETS</u>		
CASH:		
U.I. CONTRIBUTION ACCOUNT	332,219.76	285,609.04
U.I. BENEFIT ACCOUNTS	(3,954.86)	(143,772.16)
U.I. TRUST FUND ACCOUNTS (1) (2)	1,884,589,844.02	1,634,463,533.68
TOTAL CASH	1,884,918,108.92	1,634,605,370.56
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	71,620,022.70	79,378,005.46
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(35,431,336.90)	(38,136,764.10)
NET BENEFIT OVERPAYMENT RECEIVABLES	36,188,685.80	41,241,241.36
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (4) (5)	33,224,006.47	35,910,465.86
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(18,456,217.37)	(19,771,439.99)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	14,767,789.10	16,139,025.87
OTHER EMPLOYER RECEIVABLES	22,617,566.42	22,838,926.59
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(7,773,922.97)	(8,992,941.11)
NET OTHER EMPLOYER RECEIVABLES	14,843,643.45	13,845,985.48
TOTAL ACCOUNTS RECEIVABLE	65,800,118.35	71,226,252.71
TOTAL ASSETS	1,950,718,227.27	1,705,831,623.27
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (6)	27,913,352.87	29,932,574.77
OTHER LIABILITIES	12,936,520.50	10,506,211.26
FEDERAL BENEFIT PROGRAMS	248,009.48	303,174.22
CHILD SUPPORT HOLDING ACCOUNT	10,765.00	13,455.00
FEDERAL WITHHOLDING TAXES DUE	95,976.00	88,534.00
STATE WITHHOLDING TAXES DUE	1,186,946.00	1,170,751.00
DUE TO OTHER GOVERNMENTS (7)	439,045.28	485,445.35
TOTAL LIABILITIES	42,830,615.13	42,500,145.60
EQUITY:		
RESERVE FUND BALANCE	2,411,582,616.56	2,260,248,100.78
BALANCING ACCOUNT	(503,695,004.42)	(596,916,623.11)
TOTAL EQUITY	1,907,887,612.14	1,663,331,477.67
TOTAL LIABILITIES AND EQUITY	1,950,718,227.27	1,705,831,623.27

1. \$1,891,913 of this balance is for administration purposes and is not available to pay benefits.

2. \$2,115,424 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

3. The allowance for uncollectible benefit overpayments is 49.2%. The allowance for uncollectible delinquent employer taxes is 45.4%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.

4. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$3,637,361. Deferrals for the prior year were \$4,607,437.

5. \$10,948,807, or 33.0%, of this balance is estimated.

6. \$13,171,719 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$14,741,634 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.

7. This balance includes SAFI Payable of \$3,028. The 05/31/2019 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$14,657. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were \$9,483,715.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED May 31, 2019

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,877,340,076.16	2,794,896,813.36	2,635,459,959.45
BALANCING ACCOUNT	<u>(951,756,572.06)</u>	<u>(1,030,187,761.19)</u>	<u>(1,125,485,495.65)</u>
TOTAL BALANCE	1,925,583,504.10	1,764,709,052.17	1,509,974,463.80
<u>INCREASES:</u>			
TAX RECEIPTS/RFB PAID	2,611,355.54	236,558,620.52	257,802,298.56
ACCRUED REVENUES	3,279,424.19	3,626,043.29	3,592,163.83
SOLVENCY PAID	853,201.34	97,807,530.50	100,416,401.56
FORFEITURES	4,721.00	19,672.00	157,971.00
BENEFIT CONCEALMENT INCOME	47,940.81	373,279.38	444,349.98
INTEREST EARNED ON TRUST FUND	0.00	10,075,112.74	8,081,307.57
FUTA TAX CREDITS	3,411.53	14,241.53	15,851.72
OTHER CHANGES	<u>23,959.81</u>	<u>178,951.62</u>	<u>210,179.86</u>
TOTAL INCREASES	6,824,014.22	348,653,451.58	370,720,524.08
<u>DECREASES:</u>			
TAXABLE EMPLOYER DISBURSEMENTS	20,199,337.71	172,800,084.34	184,335,432.39
QUIT NONCHARGE BENEFITS	3,171,739.97	24,698,923.06	24,906,440.32
OTHER DECREASES	96,199.44	467,704.88	351,772.38
OTHER NONCHARGE BENEFITS	<u>1,052,629.06</u>	<u>7,508,179.33</u>	<u>7,769,865.12</u>
TOTAL DECREASES	24,519,906.18	205,474,891.61	217,363,510.21
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,411,582,616.56	2,411,582,616.56	2,260,248,100.78
BALANCING ACCOUNT	<u>(503,695,004.42)</u>	<u>(503,695,004.42)</u>	<u>(596,916,623.11)</u>
TOTAL BALANCE (8) (9) (10)	<u><u>1,907,887,612.14</u></u>	<u><u>1,907,887,612.14</u></u>	<u><u>1,663,331,477.67</u></u>

8. This balance differs from the cash balance related to taxable employers of \$1,872,411,733 because of non-cash accrual items.

9. \$1,891,913 of this balance is set up in the Trust Fund in two subaccounts to be used for administration purposes and is not available to pay benefits.

10. \$2,115,424 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

**DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 05/31/19**

RECEIPTS

	-CURRENT ACTIVITY--	--YEAR TO DATE---	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	\$2,611,355.54	\$236,558,620.52	\$257,802,298.56
SOLVENCY	853,201.34	97,807,530.50	100,416,401.56
ADMINISTRATIVE FEE	46.66	355.79	513.50
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	19,093.84	2,189,379.18	2,142,266.68
UNUSED CREDITS	(540,617.84)	2,946,274.41	3,120,976.34
GOVERNMENTAL UNITS	784,190.39	4,960,757.06	5,558,461.48
NONPROFITS	737,083.07	4,052,106.11	4,721,592.92
INTERSTATE CLAIMS (CWC)	1,164,822.64	2,273,744.26	2,174,775.68
ERROR SUSPENSE	(53,830.02)	1,456.51	1,678.08
FEDERAL PROGRAMS RECEIPTS	(187,501.25)	(1,469.02)	191,595.03
OVERPAYMENT COLLECTIONS	1,602,299.30	8,991,289.97	10,168,545.46
FORFEITURES	4,721.00	19,672.00	157,971.00
BENEFIT CONCEALMENT INCOME	47,940.81	373,279.38	444,349.98
EMPLOYER REFUNDS	(467,586.80)	(1,842,821.29)	(2,974,363.75)
COURT COSTS	36,698.31	219,193.61	241,843.51
INTEREST & PENALTY	305,217.61	1,666,084.37	1,627,821.60
CARD PAYMENT SERVICE FEE	382.16	626.53	0.00
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	66,667.67	580,903.18	629,904.14
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	5,400.00	17,300.00	1,130.41
SPECIAL ASSESSMENT FOR INTEREST	1,596.55	8,158.92	8,709.78
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	10,075,112.74	8,081,307.57
MISCELLANEOUS	1,862.98	14,591.57	30,405.18
TOTAL RECEIPTS	\$6,993,043.96	\$370,912,146.30	\$394,548,184.71

DISBURSEMENTS

CHARGES TO TAXABLE EMPLOYERS	\$21,650,586.44	\$179,873,235.26	\$191,574,569.87
NONPROFIT CLAIMANTS	710,957.60	3,799,940.82	4,460,424.59
GOVERNMENTAL CLAIMANTS	576,864.08	4,386,251.97	4,844,539.40
INTERSTATE CLAIMS (CWC)	260,090.89	1,977,782.77	2,061,058.67
QUITS	3,171,739.97	24,698,923.06	24,906,440.32
OTHER NON-CHARGE BENEFITS	1,121,790.15	7,595,794.05	7,850,259.53
CLOSED EMPLOYERS	0.00	(260.75)	1,328.90
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	56,684.12	686,027.38	758,409.89
EX-MILITARY (UCX)	28,336.03	203,516.38	276,303.85
TRADE ALLOWANCE (TRA/TRA-NAFTA)	103,410.86	594,119.83	1,321,232.13
DISASTER UNEMPLOYMENT (DUA)	(876.00)	19,310.00	0.00
2003 TEMPORARY EMERGENCY UI (TEUC)	(4,676.28)	(8,808.01)	(10,166.82)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(23,117.08)	(140,593.33)	(216,389.13)
FEDERAL EMERGENCY UI (EUC)	(209,118.62)	(1,296,700.04)	(1,756,453.30)
FEDERAL EXTENDED BENEFITS (EB)	(12,105.40)	(93,412.00)	(144,145.28)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	(219.06)	(1,158.65)	(967.87)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(890.48)	(2,387.14)	(1,954.10)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(105.87)	(787.53)	(2,332.16)
INTEREST & PENALTY	375,691.50	1,609,377.28	1,560,416.08
CARD PAYMENT SERVICE FEE TRANSFER	244.37	244.37	0.00
PROGRAM INTEGRITY	1,956,843.90	2,769,286.48	2,755,605.68
SPECIAL ASSESSMENT FOR INTEREST	0.00	8,411.76	14,308.57
COURT COSTS	52,910.02	219,481.60	242,512.04
ADMINISTRATIVE FEE TRANSFER	59.43	404.24	517.19
FEDERAL WITHHOLDING	34,692.00	80,620.00	(62,003.00)
STATE WITHHOLDING	(456,009.00)	400,541.80	394,748.23
STC IMPLEMENT/IMPROVE & PROMOTE/ENROLL EXP	0.00	114,151.84	0.00
FEDERAL LOAN REPAYMENTS	(3,411.53)	(14,241.53)	(15,851.72)
TOTAL DISBURSEMENTS	\$29,390,372.04	\$227,479,071.91	\$240,812,411.56
NET INCREASE(DECREASE)	(22,397,328.08)	143,433,074.39	153,735,773.15
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,907,315,437.00	\$1,741,485,034.53	\$1,480,869,597.41
BALANCE AT END OF MONTH/YEAR	\$1,884,918,108.92	\$1,884,918,108.92	\$1,634,605,370.56

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED May 31, 2019

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,893,214,829.17	\$1,730,835,304.79	\$1,471,761,579.73
INCREASES:			
TAX RECEIPTS/RFB PAID	2,611,355.54	236,558,620.52	257,802,298.56
U.I. PAYMENTS CREDITED TO SURPLUS	1,102,042.66	100,403,344.75	104,246,147.15
INTEREST EARNED ON TRUST FUND	0.00	10,075,112.74	8,081,307.57
FUTA TAX CREDITS	<u>3,411.53</u>	<u>14,241.53</u>	<u>15,851.72</u>
TOTAL INCREASE IN CASH	<u>3,716,809.73</u>	<u>347,051,319.54</u>	<u>370,145,605.00</u>
TOTAL CASH AVAILABLE	<u>1,896,931,638.90</u>	<u>2,077,886,624.33</u>	<u>1,841,907,184.73</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	20,199,337.71	172,800,084.34	184,335,432.39
BENEFITS CHARGED TO SURPLUS	<u>4,320,568.47</u>	<u>32,560,655.43</u>	<u>33,028,077.82</u>
TOTAL BENEFITS PAID DURING PERIOD	24,519,906.18	205,360,739.77	217,363,510.21
SHORT-TIME COMPENSATION EXPENDITURES	<u>0.00</u>	<u>114,151.84</u>	<u>0.00</u>
ENDING U.I. CASH BALANCE (11) (12) (13)	<u><u>1,872,411,732.72</u></u>	<u><u>1,872,411,732.72</u></u>	<u><u>1,624,543,674.52</u></u>

11. \$1,607,328 of this balance was set up in 2009 in the Trust Fund as a subaccount per the ARRA UI Modernization Provisions and is not available to pay benefits.

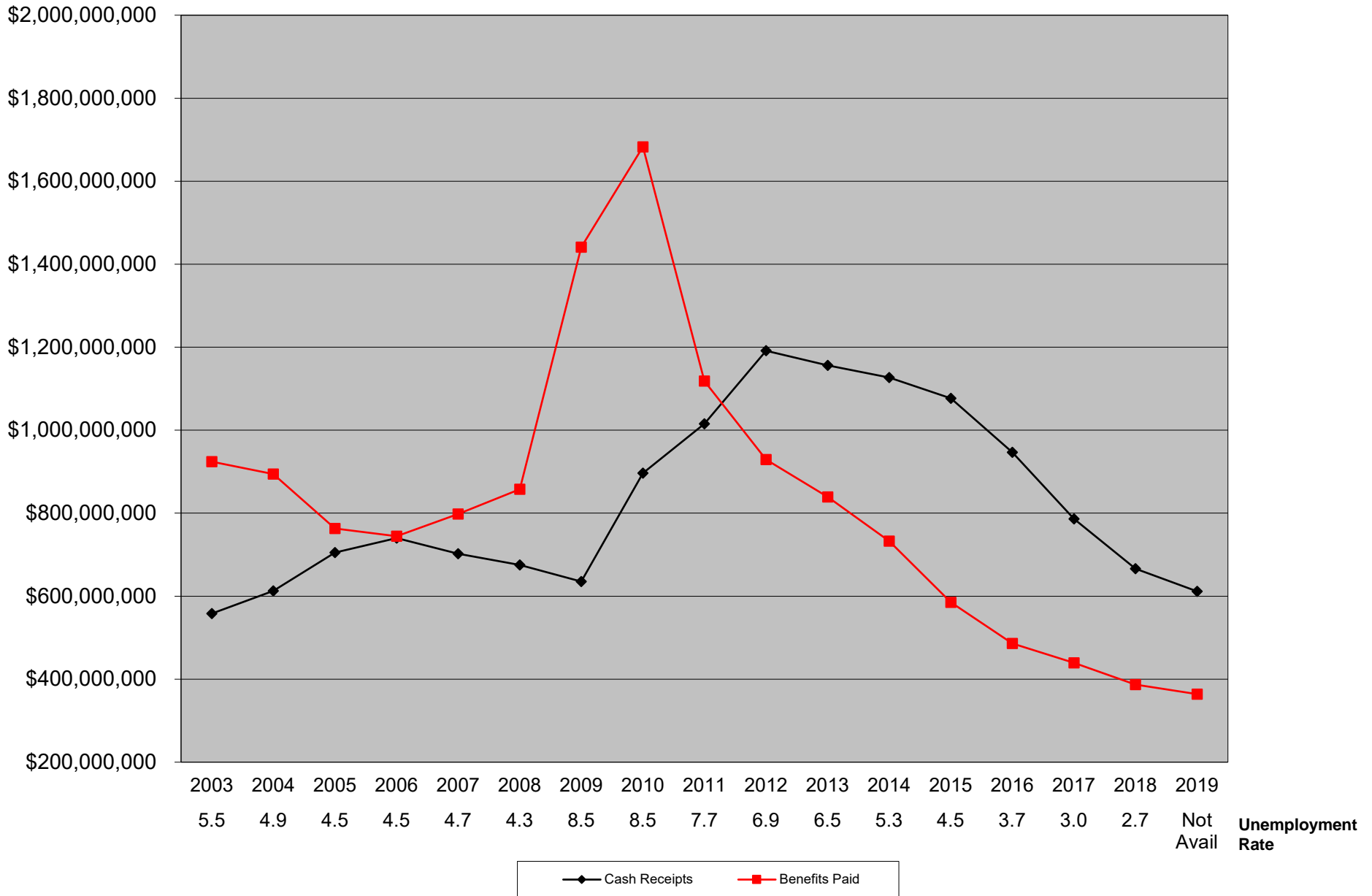
12. \$284,585 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

13. \$2,115,424 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED May 31, 2019

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$535,956,353.10)	(\$617,016,324.88)	(\$715,103,113.34)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	853,201.34	97,807,530.50	100,416,401.56
FORFEITURES	4,721.00	19,672.00	157,971.00
OTHER INCREASES	<u>244,120.32</u>	<u>2,576,142.25</u>	<u>3,671,774.59</u>
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	1,102,042.66	100,403,344.75	104,246,147.15
TRANSFERS BETWEEN SURPLUS ACCTS	583.54	27,549.29	83,458.46
INTEREST EARNED ON TRUST FUND	0.00	10,075,112.74	8,081,307.57
FUTA TAX CREDITS	<u>3,411.53</u>	<u>14,241.53</u>	<u>15,851.72</u>
TOTAL INCREASES	1,106,037.73	110,520,248.31	112,426,764.90
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	3,171,739.97	24,698,923.06	24,906,440.32
OTHER NON-CHARGE BENEFITS	1,148,828.50	7,861,729.37	8,121,637.50
MISCELLANEOUS EXPENSE	<u>0.00</u>	<u>3.00</u>	<u>0.00</u>
BENEFITS CHARGED TO SURPLUS SUBTOTAL	4,320,568.47	32,560,655.43	33,028,077.82
SHORT-TIME COMPENSATION EXPENDITURES	<u>0.00</u>	<u>114,151.84</u>	<u>0.00</u>
BALANCE AT THE END OF THE MONTH/YEAR	<u><u>(539,170,883.84)</u></u>	<u><u>(539,170,883.84)</u></u>	<u><u>(635,704,426.26)</u></u>

Cash Activity Related to Taxable Employers with WI Unemployment Rate (for all years from June to May)



June 20, 2019

Dear Members of the Unemployment Insurance Advisory Council:

Current law authorizes a 0.01% assessment of employers for program integrity efforts, to be offset by a corresponding reduction in the solvency tax. The Council and Legislature approved this law provision in 2016 to help maintain funding for anti-fraud and other program integrity efforts.

The law requires the Secretary of the Department to consult with the Council before directing the 0.01% to the Program Integrity Fund and to consider the balance of the Unemployment Insurance Trust Fund. The notice of assessment must be published by November 30 of each year for the assessment to be effective on January 1 of the following year.

In weighing the need for continued funding of program integrity efforts with the large balance in the Trust Fund, I **recommend that the Department invest the 0.01% assessment into the Program Integrity Fund** which will allow the Department to continue all current program integrity operations with no corresponding tax increase on employers.

In making this recommendation, I considered the following:

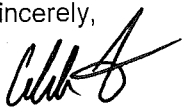
- The amount that would be generated for the Program Integrity Fund from this assessment is projected to be \$3.2 million for the year. This represents 4.6% of the total UI operating budget for FY20;
- The projected Trust Fund balance at the end of the fiscal year (June 30) is \$1.87 billion. The projected assessment amount represents less than 0.2% of this balance;
- The Wisconsin Department of Revenue projects the Wisconsin economy to grow through calendar year 2020;
- In 2018, the USDOL eliminated the 5% stop-loss maximum on federal UI operating grants to states, and as a result our federal FY19 UI operating budget was decreased by \$5.9 million. A 10% stop-loss maximum is currently in effect, and the potential exists to see another \$5.3 million reduction in our federal FY20 UI operating grant in the upcoming year; and,
- The March 2019 fraud report showed that fraudulent overpayment activity dropped by 2.31% in 2018 from 2017 -- Our efforts are working.

The Department intends to continue placing a priority on program integrity and anti-fraud efforts. To this end, I believe the use of the 0.01% assessment to fund integrity efforts continues to be warranted.

As previously stated, the Department will use these funds to continue existing program integrity efforts. These include, but are not limited to, fraud investigation efforts, worker classification enforcement, worker classification public outreach efforts, identity verification and cross-matching efforts, and investigation and prosecution of criminal UI fraud.

I would appreciate your continued support for this proposal and am happy to answer any questions you may have. Thank you for your consideration and, as always, thank you for your service to the Department and the citizens of Wisconsin.

Sincerely,



Caleb Frostman
Secretary

D19-19
Department Reports to Legislature

Date: June 20, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Department Reports to Legislature

1. Description of Proposed Change

Currently, the Department must submit a statement regarding the unemployment insurance financial outlook to the Governor and the Legislature by April 15 of every odd-numbered year.¹ The statement includes financial projections of the unemployment insurance trust fund, such as benefit payments and tax collections. The statement must also project whether the Department will need to borrow federal funds to pay benefits. The statement must include the proposed changes to the unemployment insurance law as well as projections regarding the effect of those changes on the trust fund.

By May 15 of each odd-numbered year, the Department must submit a report “summarizing the deliberations of the council on unemployment insurance and the position of the council, if any, concerning each proposed change in the unemployment insurance laws submitted under [section 16.48(1)(a)].”² This report is sometimes referred to as the “UIAC Activities Report.” When the Governor receives the Department’s report and statement, the Governor may convene a committee to review the report and statement.³ The committee then recommends a course of action on the proposals.

In 1983, in response to a severe recession in the early 1980s, Governor Anthony Earl appointed a “Special Unemployment Compensation Study Committee” tasked with conducting a thorough review of the process for UI policy development in Wisconsin and methods to keep the

¹ Wis. Stat. § 16.48(1)(a).

² Wis. Stat. § 16.48(1)(b).

³ Wis. Stat. § 16.48(2).

D19-19
Department Reports to Legislature

Legislature informed of the status of the UI Trust Fund.⁴ The changes recommended by the committee were adopted in 1983 Wis. Act 388 and enacted May 1, 1984.

1983 Wis. Act 388 created a statutory requirement that the Department submit a statement of unemployment insurance financial outlook to the Governor and Legislative Leadership every two years. 1983 Wis. Act 388 also contained a provision that required the Secretary to submit, along with the financial outlook statement, a report summarizing the deliberations of the council on unemployment insurance and the position of the Council, if any, concerning each proposed change in unemployment insurance law included in the financial outlook.

Early versions of the UIAC Activities Report included Council meeting agendas and minutes; summarized the public hearing comments received by the Council; and documented all matters on which the Council voted during the reporting period. Later versions of the UIAC Activities Report shifted to summarizing proposed law changes to the UI program that were approved by the Council for recommendation to the Legislature, as well as documenting the Council's current position on legislative provisions pending with the Council at the time the report was submitted (regardless of whether the pending item originated from the Council, the Governor, the Legislature, or the Department).

The early versions of the financial outlook statement and the UIAC Activities Report, and the recommended law changes included in the reports, served in many ways as supporting documents for the UIAC agreed bill by detailing the analysis and rationale behind the recommended law changes. The legislative recommendations in the financial outlook were endorsed by the Council; however, both sides of the Council could express their stance on areas of the legislative package they felt could have been improved.

⁴ One of the committee members was future Gov. Thompson.

D19-19
Department Reports to Legislature

2013 Wis. Act 36 modified the due dates of the financial outlook and UIAC activities reports, resulting in staggered deadlines of April 15 and May 15 respectively (as opposed to concurrently as had been required previously).

The Governor typically introduces the budget bill to the Legislature in February of each odd-numbered year, while the Council typically introduces its law change proposals to the Legislature in the fall of odd-numbered years or no later than January of the even-numbered year. Based on this schedule, the Department proposes to change the date for the submission of the financial outlook report to May 31 of every even-numbered year, beginning in 2020. The Department proposes to submit this report to the UIAC and the Governor. This will provide the Governor and UIAC time to review the health of the unemployment insurance Trust Fund before the biennial budget bill is submitted to the Legislature and for the UIAC to consider any recommendations contained in the financial outlook report for inclusion in the UIAC agreed bill.

The UIAC Public Hearing is typically held in the autumn of even-numbered years. Completing the financial outlook by May 31 of the even-numbered years provides the public with an understanding of the health of the Trust Fund before the public hearing, and an opportunity to suggest changes to the unemployment law regarding the Trust Fund at the public hearing. So, the Department also proposes to codify the existing practice of posting the financial outlook report on its website.

The Department proposes to repeal section 16.48(1)(a)5., which requires the Department to explain why significant cash reserves should be retained in the unemployment trust fund, if those reserves exist. Federal unemployment law includes the “withdrawal standard,” which permits, with few exceptions, the withdrawal of funds from the Trust Fund only for the payment

D19-19
Department Reports to Legislature

of unemployment benefits.⁵ Because the Trust Fund may only be used for the payment of unemployment benefits, the cash reserves in the Trust Fund must always be retained for that purpose. And, maintaining a large Trust Fund balance results in lower taxes for employers and ensures that funds are available to pay benefits.

The Department proposes to amend section 16.48(1)(a)6., which requires the Department to explain why it is not proposing to liquidate any unemployment insurance program debt. The amended statute would instead require the Department to propose methods to liquidate the debt. The purpose of this change is to provide options to reduce or eliminate any unemployment insurance program debt.

The Department further proposes to repeal section 16.48(2), which permits the Governor to convene a special committee to review the financial outlook report and attempt to reach a consensus regarding proposed changes to the unemployment insurance law. It appears that a special committee described in this section has not been convened since the 1980s. The Governor could, at any time, convene a special committee described in this section by executive order.

The Department also recommends that the deadline for the UIAC Activities Report be changed to January 31 of every even-numbered year. The intent of this change is that the UIAC Activities Report (together with the financial outlook report) would be submitted to the Governor and the Legislature contemporaneously with the Council's Agreed Bill. This report would, in most biennia, be submitted earlier than January 31 of the even-numbered year because the Agreed Bill is typically introduced before January 31 of the even-numbered year.

⁵ 26 USC § 3304(a)(4); 42 USC § 503(a)(5).

D19-19
Department Reports to Legislature

2. Proposed Statutory Change

Section 16.48 of the statutes is amended to read:

(1)

(a) No later than ~~April 15~~ May 31 of each ~~odd-numbered~~ even-numbered year, the secretary of workforce development shall prepare and furnish to the governor, ~~the speaker of the assembly, the minority leader of the assembly, and the majority and minority leaders of the senate~~ and the council on unemployment insurance a statement of unemployment insurance financial outlook, which shall contain the following, together with the secretary's recommendations and an explanation for such recommendations:

1. Projections of unemployment insurance operations under current law through at least the 2nd year following the close of the biennium, including benefit payments, tax collections, borrowing or debt repayments and amounts of interest charges, if any.
2. Specific proposed changes, if any, in the laws relating to unemployment insurance financing, benefits and administration.
3. Projections specified in subd. 1. under the proposed laws.
4. The economic and public policy assumptions upon which the projections are based, and the impact upon the projections of variations from those assumptions.
- ~~5. If significant cash reserves in the unemployment reserve fund are projected throughout the forecast period, a statement giving the reasons why the reserves should be retained in the fund.~~
6. If unemployment insurance program debt is projected at the end of the forecast period, ~~the reasons why it is not proposed~~ methods to liquidate the debt.

D19-19
Department Reports to Legislature

~~(b) No later than May 15 of each odd-numbered year, the secretary of workforce development shall prepare and furnish to the governor, the speaker of the assembly, the minority leader of the assembly, and the majority and minority leaders of the senate a report summarizing the deliberations of the council on unemployment insurance and the position of the council, if any, concerning each proposed change in the unemployment insurance laws submitted under par. (a).~~

~~(2) Upon receipt of the statement and report under sub. (1), the governor may convene a special committee consisting of the secretary of workforce development and the legislative leaders specified in sub. (1) to review the statement and report. Upon request of 2 or more of the legislative leaders specified in sub. (1), the governor shall convene such a committee. The committee shall attempt to reach a consensus concerning proposed changes to the unemployment insurance laws and shall submit its recommendations to the governor and legislature concurrently with the statement furnished under sub. (3).~~

~~(3) No Biennially, no later than June 15 January 31 of each ~~odd-numbered~~ even-numbered year, the secretary of workforce development, ~~under the direction of the governor,~~ shall submit to ~~each member of the legislature an updated~~ the governor, the speaker of the assembly, the minority leader of the assembly, and the majority and minority leaders of the senate and the council on unemployment insurance ~~the statement of unemployment insurance financial outlook created under which shall contain the information specified in sub. (1) (a), together with the governor's recommendations and an explanation for such recommendations, and a copy of the report required under sub. (1) (b)~~ a report summarizing the deliberations of the council on unemployment insurance and the~~

D19-19
Department Reports to Legislature

position of the council, if any, concerning each proposed change in the unemployment insurance laws submitted under sub. (1).

(4) The department of workforce development shall post the most recent version of the reports created under this section on its internet website.

3. Effects of Proposed Change

- a. **Policy.** The proposed change will result in changes to the dates by which certain reports must be submitted to the Governor and Legislature, to better facilitate the legislative process.
- b. **Administrative.** None expected.
- c. **Fiscal.** No fiscal effect is expected.

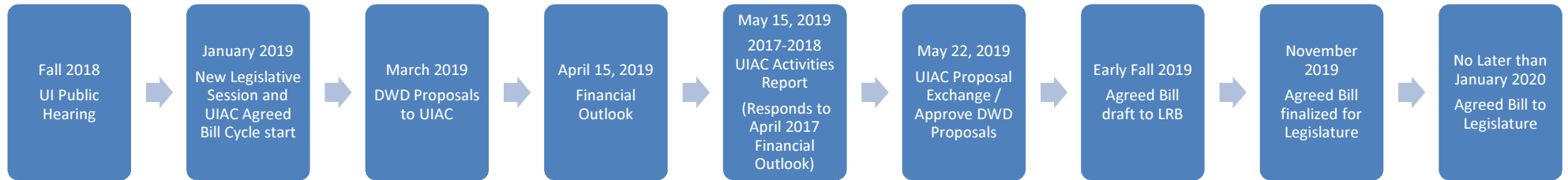
4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

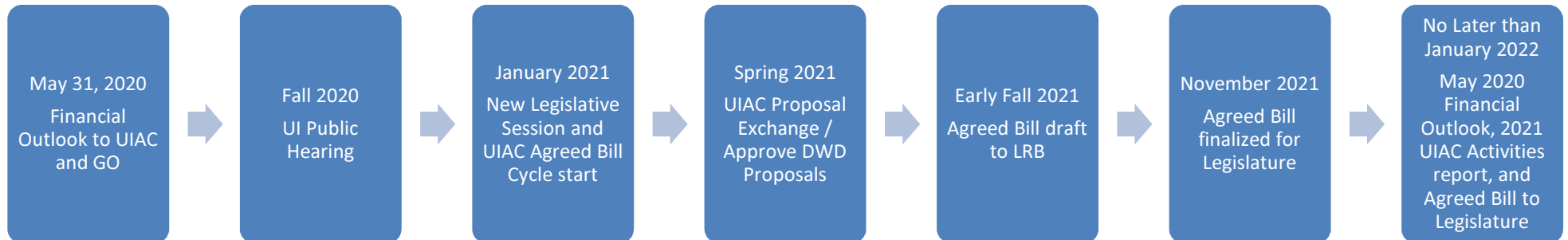
5. Proposed Effective/Applicability Date

This proposal would be effective February 1, 2020.

Current Timeline



Proposed Timeline



D19-19
Department Reports to the Legislature

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This proposal would not impact the UI Trust Fund.

IT and Administrative Impact:

This proposal does not have any one-time IT or administrative impacts.

Summary of Proposal:

Currently, the Department must submit the Financial Outlook to the Governor and Legislature by April 15 of every odd-numbered year and the UIAC Activities Report by May 15 of every odd-numbered year. This law change proposes changing the submission date of the Financial Outlook to May 31 of every even-numbered year, and the submission date of the UIAC Activities Report to January 31 of every even-numbered year to better facilitate the legislative process. This proposal also makes changes to the report requirements to better support the functions of these reports.

UI Trust Fund Methodology:

This proposal would not impact the UI Trust Fund.

The proposed change will result in changes to the dates by which certain reports must be submitted to the Governor and Legislature to better facilitate the legislative process.

IT and Administrative Impact Methodology:

This proposal does not have any one-time IT or administrative impacts.

D19-20
Effect of a Criminal Conviction

Date: June 20, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Effect of a Criminal Conviction

1. Description of Proposed Change

When the Department refers matters for criminal prosecution, it has usually already issued an administrative determination that the individual concealed information with the amount of the overpayment and penalty owed to the Department. The Department may use its statutory administrative collections powers, such as issuing warrants or levies, the Treasury Offset Program, interception of state income tax refunds, etc., to collect debts assessed by administrative determinations under the unemployment law. At the end of the criminal case, the Department may continue to collect the debt as assessed under the administrative determination. Or, the Department of Corrections may collect restitution, which would be credited toward the administratively determined debt.

In some circumstances, however, criminal prosecution may result in a court-ordered restitution order or judgment when the Department has not issued an administrative determination that a debt is owed. Examples could include submitting forged documents to the Department with the expectation that the forger would receive a benefit; submitting false unemployment benefit claims by using a fictitious employer scheme; or filing benefit claims using stolen identities. In certain circumstances, these acts could be federal crimes, such as mail or wire fraud. These serious crimes may result in convictions and court-ordered restitution without the Department having first issued an administrative determination.

The Department proposes a law change to make criminal conviction judgments binding on criminal defendants for the purposes of proceedings that arise under the unemployment law.

D19-20
Effect of a Criminal Conviction

This is consistent with federal law.¹ The standard of proof in criminal cases is beyond a reasonable doubt, which is a greater burden than in civil unemployment cases. It is not the intent of this proposal to change the Department's practice with respect to nearly all cases referred for criminal prosecution. The Department intends to continue to refer most cases for prosecution after its administrative determination is final.

2. Proposed Statutory Changes

Section 108.101(5) of the statutes is created to read:

(5) Notwithstanding any other law, an order or judgment of conviction for a crime entered by a court is binding on the convicted person in an action or proceeding under this chapter. A person convicted of a crime is precluded from denying the essential allegations of the criminal offense that is the basis for the conviction in an action or proceeding under this chapter.

3. Effects of Proposed Change

- a. **Policy.** The proposed change is expected to result in improved collection of debts owed to the Department.
- b. **Administrative.** None expected.
- c. **Fiscal.** This proposal is expected to have a positive effect on the UI Trust Fund.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with the proposed changes in the UIAC Agreed Bill.

¹ "A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim." 18 USC § 3664(l).

D19-20
Effect of a Criminal Conviction

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This proposal may have a positive but negligible impact to the UI Trust Fund based on increased overpayment collections.

IT and Administrative Impact:

This proposal is not expected to have any one-time IT or administrative impacts.

Summary of Proposal:

This law change proposes making criminal conviction judgments binding on criminal defendants for the purposes of civil proceedings that arise under Wisconsin unemployment law.

UI Trust Fund Methodology:

Without an unemployment administrative determination, the collection of unemployment debt based on the criminal conviction relies solely on court ordered restitution collection methods. This proposal will allow the Department to issue an administrative determination after the criminal conviction, which would then allow UI collections to use all mechanisms available to collect the debt. Though an uncommon scenario, this could result in faster unemployment debt recovery and a higher percentage of unemployment debt collection, resulting in a negligible but positive impact on the Trust Fund.

IT and Administrative Impact Methodology:

This proposal would not change the current practice with respect to nearly all cases determined and then referred for prosecution. This proposal is not expected to have any one-time IT or administrative impacts.

D19-21
Eligibility for Certain Employees

Date: June 20, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Eligibility for Certain Employees

1. Description of Proposed Change

The federal government is “shut down” when Congress has not appropriated funds to continue federal agency operations at some or all federal agencies. For example, during the early-2019 partial shutdown, employees of the US Department of Labor were working and being paid as usual. But employees of the US Department of Homeland Security were either not working and not being paid (known as “furloughed” employees) or were required to work without being paid (known as “excepted” employees).¹

Under current state law, an employee who works 32 hours or more per week is considered working “full time” and may not receive unemployment insurance benefits.² Federal excepted employees working more than 32 hours per week are therefore ineligible for Wisconsin unemployment insurance benefits, even if they are not being paid for that work.³

Furloughed employees may claim unemployment insurance benefits. But, if the furloughed employees receive backpay for the shutdown period when they did not work, they must repay the unemployment insurance benefits they received for that spell of unemployment.⁴

¹ See “Impacts of the Federal Government Shutdown and Unemployment Compensation for Federal Employees and State Administrative Funding for State UI Programs,” Unemployment Insurance Program Letter No. 31-13 (US-DOL Oct. 11, 2013) (“‘Excepted’ employees who remain on their jobs on a full-time basis are generally not eligible for unemployment benefits because states may determine that they are still fully employed. Excepted workers will not be paid for their work until Congress appropriates the funds.”).

² Wis. Stat. § 108.05(3)(c)1.

³ Because benefit eligibility for federal employees is largely based on state law, excepted employees in other states may qualify for unemployment benefits in those states. Apparently, Washington, Vermont, California, and Colorado paid unemployment insurance benefits to excepted federal employees during the early-2019 shutdown.

⁴ Wis. Stat. § 108.22(8)(a).

D19-21
Eligibility for Certain Employees

US-DOL informed the states that its position is that federal excepted employees are working, not unemployed, and generally ineligible for unemployment insurance benefits under federal and state law.⁵ US-DOL has also informed the states that federal agencies will not reimburse the states for unemployment benefits paid to excepted federal employees and that states should not expect federal assistance in recovering overpaid benefits after the shutdown ends.⁶ Further, US-DOL indicates that states may not use their federal administrative grant funds to process unemployment claims for excepted federal employees.⁷

The Department proposes a state law change, like that proposed by Sen. Lena Taylor to the Council on March 21, 2019, to provide unemployment benefits to excepted federal employees during a future shutdown. If the federal government appropriates funds to pay excepted federal workers, those workers would be required to repay the unemployment benefits received during the shutdown. The proposed statutory changes are drafted to cover all workers in the state. Further, a contingency provision is added to state law to ensure that, if federal agencies refuse to reimburse the state for the unemployment benefits paid, those benefits will be restored to Wisconsin's Unemployment Trust Fund. Current law provides funding for the administrative costs of paying the claims of the federal excepted workers if Wisconsin may not use its federal administrative grant for that purpose.⁸

2. Proposed Statutory Changes

Proposed statutory changes are attached.

⁵ https://oui.doleta.gov/unemploy/2019_shutdown/docs/UCFE.pdf.

⁶ *Id.*

⁷ *Id.*

⁸ Wis. Stat. §§ 108.20(1) and 20.445(1)(gd) (colloquially known as the “interest and penalty fund.”).

D19-21
Eligibility for Certain Employees

3. Effects of Proposed Change

- a. **Policy.** The proposed change is expected to result in payment of unemployment benefits for certain employees who work but whose wages are not being paid.
- b. **Administrative.** Training of Department staff.
- c. **Fiscal.** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with the proposed changes in the UIAC Agreed Bill.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1581/P2
MED:ahe

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 20.445 (1) (gd), 108.05 (3) (a), 108.05 (3) (c) (intro.), 108.07 (7),
2 108.20 (2) and 108.20 (2m); and *to create* 108.05 (3) (cm) of the statutes;
3 **relating to:** eligibility for and charging of unemployment insurance benefits
4 to certain employees and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, a claimant for unemployment insurance benefits is ineligible to receive any benefits for a week in which the claimant performs 32 or more hours of work. This bill requires the Department of Workforce Development, which administers the UI law, to disregard an employee's hours worked for an employer in a given week and wages payable to the employee for that week when determining the employee's benefit eligibility if certain conditions apply, including that the employer requires the employee to work during the week as a condition of continued employment with the employer and the employer is unable to pay wages because a government unit or the federal government fails to appropriate funds to the employer.

Also under current law, whenever UI benefits are chargeable based on federal employment, DWD is to charge those benefits to the federal government. This bill allows DWD to instead pay those benefits from interest and penalty moneys appropriated to DWD in the case where the federal government refuses to reimburse the benefits.

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

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

1 **SECTION 1.** 20.445 (1) (gd) of the statutes is amended to read:

2 20.445 (1) (gd) *Unemployment interest and penalty payments.* All moneys
3 received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13)
4 (c) and 108.22 except interest and penalties deposited under s. 108.19 (1q), and
5 forfeitures under s. 103.05 (5), all moneys not appropriated under par. (gg) and all
6 moneys transferred to this appropriation account from the appropriation account
7 under par. (gh) for the payment of benefits specified in s. 108.07 (5) and (7) and 1987
8 Wisconsin Act 38, section 132 (1) (c), for the payment of interest to employers under
9 s. 108.17 (3m), for research relating to the condition of the unemployment reserve
10 fund under s. 108.14 (6), for administration of the unemployment insurance program
11 and federal or state unemployment insurance programs authorized by the governor
12 under s. 16.54, for satisfaction of any federal audit exception concerning a payment
13 from the unemployment reserve fund or any federal aid disallowance concerning the
14 unemployment insurance program, for assistance to the department of justice in the
15 enforcement of ch. 108, for the payment of interest due on advances from the federal
16 unemployment account under title XII of the social security act to the unemployment
17 reserve fund, and for payments made to the unemployment reserve fund to obtain
18 a lower interest rate or deferral of interest payments on these advances, except as
19 otherwise provided in s. 108.20.

20 **SECTION 2.** 108.05 (3) (a) of the statutes is amended to read:

1 108.05 (3) (a) Except as provided in pars. (c), (cm), (d) and (dm) and s. 108.062,
2 if an eligible employee earns wages in a given week, the first \$30 of the wages shall
3 be disregarded and the employee's applicable weekly benefit payment shall be
4 reduced by 67 percent of the remaining amount, except that no such employee is
5 eligible for benefits if the employee's benefit payment would be less than \$5 for any
6 week. For purposes of this paragraph, "wages" includes any salary reduction
7 amounts earned that are not wages and that are deducted from the salary of a
8 claimant by an employer pursuant to a salary reduction agreement under a cafeteria
9 plan, within the meaning of 26 USC 125, and any amount that a claimant would have
10 earned in available work under s. 108.04 (1) (a) which is treated as wages under s.
11 108.04 (1) (bm), but excludes any amount that a claimant earns for services
12 performed as a volunteer fire fighter, volunteer emergency medical services
13 practitioner, or volunteer emergency medical responder. In applying this paragraph,
14 the department shall disregard discrepancies of less than \$2 between wages reported
15 by employees and employers.

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

17 108.05 (3) (c) (intro.) Except as provided in par. (cm) and when otherwise
18 authorized in an approved work-share program under s. 108.062, a claimant is
19 ineligible to receive any benefits for a week in which one or more of the following
20 applies to the claimant for 32 or more hours in that week:

21 **SECTION 4.** 108.05 (3) (cm) of the statutes is created to read:

22 108.05 (3) (cm) The department shall disregard an employee's hours worked
23 for an employer in a week and wages payable to the employee for the week when
24 determining the employee's benefit eligibility if all the following apply:

1 1. The employer requires the employee to work during the week as a condition
2 of continued employment with the employer.

3 2. The employer is unable to pay wages because a government unit or the
4 federal government fails to appropriate funds to the employer.

5 3. The employer is not expected to pay the employee for the services performed
6 or the employer will, until funds are appropriated by a government unit or the federal
7 government, indefinitely delay payment for the services performed.

8 **SECTION 5.** 108.07 (7) of the statutes is amended to read:

9 108.07 (7) Whenever benefits are chargeable under sub. (1) or (2) based on
10 federal employment, the department shall charge the benefits to the federal
11 government, except that, if the federal government refuses to reimburse the benefits
12 to the department, the department shall charge the benefits to the administrative
13 account and pay them from the appropriation under s. 20.445 (1) (gd).

14 **SECTION 6.** 108.20 (2) of the statutes is amended to read:

15 108.20 (2) All amounts received by the department for the administrative
16 account shall be paid over to the secretary of administration and credited to that
17 account for the administration of this chapter and the employment service, for the
18 payment of benefits chargeable to the account under s. 108.07 (5) and (7) and for the
19 purposes specified in sub. (2m).

20 **SECTION 7.** 108.20 (2m) of the statutes is amended to read:

21 108.20 (2m) From the moneys not appropriated under s. 20.445 (1) (gg) that
22 are received by the administrative account as interest and penalties under this
23 chapter, the department shall pay the benefits chargeable to the administrative
24 account under s. 108.07 (5) and (7) and the interest payable to employers under s.
25 108.17 (3m), and may expend the remainder to pay interest due on advances to the

1 unemployment reserve fund from the federal unemployment account under title XII
2 of the social security act, 42 USC 1321 to 1324, to conduct research relating to the
3 condition of the unemployment reserve fund under s. 108.14 (6), to administer the
4 unemployment insurance program and federal or state unemployment insurance
5 programs authorized by the governor under s. 16.54, to assist the department of
6 justice in the enforcement of this chapter, to make payments to satisfy a federal audit
7 exception concerning a payment from the fund or any federal aid disallowance
8 involving the unemployment insurance program, or to make payments to the fund
9 if such action is necessary to obtain a lower interest rate or deferral of interest
10 payments on advances from the federal unemployment account under title XII of the
11 social security act, except that any interest earned pending disbursement of federal
12 employment security grants under s. 20.445 (1) (n) shall be credited to the general
13 fund.

14 **SECTION 8. Initial applicability.**

15 (1) This act first applies to claims filed on the effective date of this subsection.

16 **SECTION 9. Effective date.**

17 (1) This act takes effect on the first Sunday after publication.

18 (END)

D19-21
Eligibility for Certain Employees

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Benefit Payment Impact: This proposal would result in additional unemployment benefit payments of approximately \$370,000 to \$1.48 million per occurrence.

UI Trust Fund Impact: This proposal would have negligible to no impact on the UI Trust Fund.

Federal Government Impact: UCFE employers are not credited for overpayments that cannot be collected. This proposal could result in a cost to the Federal government of approximately \$74,000 to \$296,000 per occurrence based on the overpayment collection rate. **Appropriation Impact:** If these benefits were paid from interest and penalties moneys appropriated to DWD, this proposal could result in the above cost to these moneys in lieu of the Federal government.

IT and Administrative Impact: This proposal would have a one-time IT impact of approximately 450 hours or \$39,600 and an administrative impact of approximately \$13,200. The total one-time impact is estimated at \$52,800.

The proposal would result in ongoing administrative staffing costs of approximately 491 hours or \$22,236 to 1,961 hours or \$88,818 per occurrence. It would not require additional FTE positions. This ongoing staff cost could be absorbed by the agency.

Summary of Proposal: Under current law, a claimant for unemployment insurance benefits is ineligible to receive any benefits for a week in which the claimant performs 32 or more hours of work or earns more than \$500 in wages. Benefits are paid under a partial wage formula in a week if the hours worked are under 32 and the wages earned \$500 or less. This proposal would disregard an employee's hours worked and wages earned for an employer in a given week when determining the employee's benefit eligibility if certain conditions apply, including that the employer requires the employee to work during the week as a condition of continued employment with the employer and the employer is unable to pay wages because a government unit or the federal government fails to appropriate funds to the employer.

This proposal allows these benefits to be paid from interest and penalty moneys appropriated to DWD in the case where the federal government refuses to reimburse the benefits.

Benefit Payment Methodology: Based on analysis of the 2013 government shutdown and 2019 government shutdown claims data, this proposal would affect approximately 250-1,000 employees per occurrence. The definition of "excepted" employees" (or employees that are required to work without pay as a condition of employment during a government shutdown) varies by occurrence – thus it is hard to approximate the number of affected employees in Wisconsin. Most of these employees would be full time employees earning enough wages to receive the maximum benefit rate of \$370 per week. Five weeks is the assumed claims duration based on the 2019 government shutdown duration. Accounting for the waiting week, if all eligible employees filed for benefits, this would result in **additional unemployment benefit payments of approximately \$370,000 to \$1.48 million per occurrence.**

UI Trust Fund Methodology: This proposal would have negligible to no impact on the UI Trust Fund.

Benefits paid would be reimbursed primarily by UCFE employers (there may be few federal contract employers with non-UCFE accounts). Employees would be required to repay the benefits via overpayment once the backpay for the affected weeks was received, which would then be credited to the UCFE employer in most cases. Average benefit overpayment collection rate is 80 percent.

Federal Government Methodology: UCFE employers are not credited for overpayments that cannot be collected. This proposal could result in a cost to the Federal government of approximately \$74,000 to \$296,000 per occurrence based on the 80 percent overpayment collection rate.

Appropriation Methodology: If these benefits were paid from interest and penalties moneys appropriated to DWD, this proposal could result in the above cost to these moneys in lieu of the Federal government.

IT and Administrative Impact Methodology: UI business areas determined a high-level operational process needed to implement this proposal. The UI Division System and Processing Section and DWD BITS were then able to determine system requirements needed to implement these changes. Based on these requirements the one-time IT impact is estimated at approximately 450 hours or \$39,600 based on BITS hourly rate. The administrative one-time impact is typically 1/3 the IT costs or approximately \$13,200.

The total one-time IT and administrative impact is estimated at approximately \$52,800.

Based on the operational process, ongoing administrative staffing costs were estimated based on approximately 250-1000 claims per occurrence. This proposal would result additional staff hours needed in benefits and collections areas to determination eligibility, administer payments, and collect overpayments.

The proposal would result in ongoing administrative staffing costs estimated at approximately 491 hours or \$22,236 to 1,961 hours or \$88,818 per occurrence. It would not require additional FTE positions. This ongoing staff cost could be absorbed by the agency.

Unemployment Insurance Advisory Council
Tentative Schedule
2019
(Updated 06/20/2019)

January 17, 2019	Scheduled Meeting of UIAC Discuss Public Hearing (Nov. 15, 2018) Comments
February 21, 2019	Scheduled Meeting of UIAC (Cancelled)
March 21, 2019	Scheduled Meeting of UIAC Introduce Department Law Change Proposals
April 18, 2019	Scheduled Meeting of UIAC Discuss Department Proposals
May 22, 2019	Re-Scheduled Meeting of UIAC Approve/Discuss Department Proposals Exchange of Labor & Management Law Change Proposals
June 20, 2019	Scheduled Meeting of UIAC Approve/Discuss Department Proposals Discuss Labor & Management Proposals
July 18, 2019	Scheduled Meeting of UIAC Approve/Discuss Department Proposals Discuss Labor & Management Proposals
August 15, 2019	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
September 19, 2019	Scheduled Meeting of UIAC Review and Approval of Department Draft of Agreed Upon Bill
October 17, 2019	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
November 21, 2019	Scheduled Meeting of UIAC Final Review and Approval of LRB Draft of Agreed Upon Bill
December 2019	Tentative Meeting of UIAC – If Needed
January 2020	Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2020 Legislative Session