



## Unemployment Insurance Advisory Council

### Meeting

August 20, 2020, 10:00 a.m. – 2:00 p.m.

#### **The public may attend by teleconference:**

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)  
Meeting Number (Access Code): 145 280 3310 Meeting Password: DWD1

### Agenda Items and Schedule

1. Call to Order and Introductions
2. Approval of Minutes of the July 16, 2020 Council Meeting
3. Department Update
4. Trust Fund Update – Tom McHugh
5. Program Integrity Assessment
6. Federal Update
  - [Protecting Nonprofits from Catastrophic Cash Flow Strain Act](#), P.L. 116–151
  - [Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019](#)
    - [UIPL 27-20](#)
7. Secretary's letter to the Council regarding request for extension of emergency rules

## 8. Rulemaking Update

- [Emergency Rule 2006](#), DWD Chs. 127 and 128
  - Work search actions, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic.
  - Effective May 9, 2020 – October 5, 2020
- [Emergency Rule 2011](#), DWD Ch. 113
  - Waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19.
  - Effective June 5, 2020 – November 1, 2020
- [Emergency Rule 2018](#), DWD Ch. 102
  - Employer contribution rates for 2021.
  - Public hearing was held July 22, 2020 – no comments.
  - Effective June 29, 2020 – November 25, 2020
- Emergency and Permanent Rule, DWD Ch. 120
  - Providing notification of the availability of unemployment insurance to employees at the time of separation from employment.

## 9. Public Hearing Schedule

## 10. Research Requests

## 11. Future Meeting Dates

## 12. Adjourn

## Notice

- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may not address all agenda items or follow the agenda order. 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 representative 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 Wis. Stat. § 19.85(1)(ee). 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 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 when the meeting is scheduled to begin 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, Madison, WI

July 16, 2020

Held Via Teleconference Due to Public Health Emergency

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

**Members:** Janell Knutson (Chair), Scott Manley, Susan Quam, Sally Feistel, Shane Griesbach, Terry Hayden, Di Ann Fechter and Dennis Delie.

**Department Staff:** Mark Reihl, Amy Banicki, Andrew Rubsam, Jim Moe, Mike Myszewski, Jennifer Wakerhauser (Legal Counsel), Tom McHugh, Pam James, Jason Schunk, Emily Savard, Janet Sausen, John Westbury, Robert Usarek, Patrick Lonergan, and Joe Brockman.

**Members of the Public:** BJ Dernbach (office of Representative Warren Petryk), Anita Krasno (General Counsel Labor & Industry Review Commission), Chris Reader (Wisconsin Manufacturers & Commerce), John Chapman, Carol Gabrielsen (Unemployment Consultant), Victor Forberger (Attorney, Wisconsin UI Clinic), Madeline McIlhon (Legislative Audit Bureau), Margit Kelley (Senior Staff Attorney, Wisconsin Legislative Council), Mary Beth George (office of Representative Sinicki).

### 1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:20 a.m. under the Wisconsin Open Meetings Law. Attendance was taken by roll call and Ms. Knutson recognized the department staff in attendance.

### 2. Department Update

Mr. Reihl stated that since March 15, 2020, the department has hired and trained 1,400 staff. Of the 1,400 staff members added, 288 were permanent, LTE or project state employees; 231 were tasked from other state agencies; and 899 were vendor staff.

Help Center hours were expanded. Hours are now 6:15 a.m. to 5:30 p.m. Monday through Friday, and from 7:00 a.m. to 1:30 p.m. on Saturday. Calls to the Help Centers have decreased significantly.

The department has implemented the three programs under the CARES Act: Federal Pandemic Unemployment Compensation (FPUC); Pandemic Unemployment Assistance (PUA); and Pandemic Emergency Unemployment Compensation (PEUC).

PEUC was deployed on June 24, 2020. The FPUC benefit of \$600.00 per week is last payable the week ending July 25, 2020. Wisconsin has qualified for Extended Benefits.

From March 15, 2020, to July 16, 2020, total benefits paid were \$2,768,510,210. These benefits were paid to 442,539 individuals.

As of July 7, 2020, UI has received 4,259,000 claims and has resolved 87% of those claims. Last week, UI received 27,774 initial claims as compared to 5,631 initial claims for the same week in 2019. Last week, UI received 290,473 weekly claims as compared to 30,492 weekly claims for the same week in 2019.

As of July 13, 2020, there are 671 active Work-Share plans with a total of 22,583 participants.

Mr. Griesbach asked about Extended Benefits. Mr. Reihl stated that, once the PEUC benefits are exhausted, claimants will qualify for Extended Benefits, which are 13 weeks.

Ms. Quam stated that some of her members have contacted her and said that when they call UI to correct mistakes on claims, they are struggling to get through on the telephone and are sometimes told to call back later and it takes them sometimes days to get through.

Mr. Reihl indicated that UI has brought on more staff and has expanded hours to help claimants, so wait times should be reduced.

### **3. Approval of Minutes**

Motion by Mr. Hayden, second by Mr. Manley, to approve the minutes of the May 7, 2020 meeting without correction. The vote was taken by roll call and passed unanimously.

### **4. Trust Fund Update**

Mr. McHugh reported that regular UI benefits paid year-to-date were \$854.1 million. This was a 253.8% increase from 2019. Since the beginning of 2020, 447,876 claimants have been paid \$2.7 billion.

Federal benefits have been paid as follows:

Federal Pandemic Unemployment Compensation (FPUC) - \$1,744.9 million;

Pandemic Unemployment Assistance (PUA) - \$23.0 million; and.

Pandemic Emergency Unemployment Compensation (PEUC) - \$11.9 million.

Tax receipts are down slightly from 2019. In 2020, UI has collected \$324.2 million in UI taxes. At the same point in 2019, UI collected \$339.9 million, a decrease of \$15.7 million.

On June 30, 2020, the trust fund balance was approximately \$1.5 billion. Since the balance was greater than \$1.2 billion on June 30, 2020, Wisconsin will remain in Schedule D for 2021.

## 5. Industry Employment Data

Mr. Westbury's presentation consisted of two slides. The first was titled Wisconsin Initial Claims During the Covid-19 Pandemic (March 15, 2020, through July 5, 2020).

During this period there were 776,463 claimants and 781,015 claims, the difference between the two being that a claimant could suffer multiple dislocations.

The red graphic on the left side of the slide shows the top ten industries by the number of unique claimants.

The purple graphic on the right side of the slide shows the average monthly employment by industry.

For example, by dividing the monthly average employment of manufacturing by the number of unique claimants, 37% of individuals employed in the manufacturing sector filed an initial claim thus far during the pandemic.

Ms. Knutson stated that July initial claims went up a little bit. Ms. Knutson asked if that is unexpected.

Mr. Westbury stated that this is a typical occurrence on a year-to-year basis around July 4<sup>th</sup>.

Mr. Manley asked if there is any way of determining if those workers have been completely detached from the workforce as opposed to workers having their hours reduced.

Mr. Westbury did not have that data.

Mr. Westbury stated that the second slide in the presentation was titled Statewide Initial Claims by Employer Types (March 15, 2020, through July 5, 2020).

The red graphic on the left side of the slide shows initial claims by industry among large employers. The purple graphic on the right side of the slide shows initial claims by industry among small employers.

Large employers are defined as those employers having a net taxable payroll equal or greater than \$500,000. Small employers are defined as those employers who have a net payroll less than \$500,000.

There are two other employer types. The first is non-UI employers. They are, for example, religious organizations. The second are independent contractors.

The graphic at the top of the page shows initial claims by the four employer types between March 15, 2020, and July 5, 2020.

## **6. Legislative Update**

Mr. Rubsam stated that the CARES Act has a provision for the federal government to pay 50% of the cost of benefit payments charged to reimbursable employers. The reimbursable employer reimburses the department 100% of all the benefits charged in normal times. The CARES Act requires that the federal government reimburse 50% of that amount during the pandemic. US-DOL interprets the CARES Act to require full payment by the reimbursable employer before reimbursement is made by the federal government.

Wisconsin Act 185 requires zero reimbursement by reimbursable employers for claims related to the public health emergency because 50% of those claims will be charged to the interest and penalties appropriation. The federal interpretation of the CARES Act requires reimbursable employers to pay 50% of the benefit charges before reimbursement, causing a hardship to reimbursable employers.

Senate Bill 4209, which has passed both the Senate and House of Representatives, and is awaiting the President's signature, will amend the CARES Act to remove the requirement for reimbursable employers to first pay 50% of benefit costs before the department receives federal reimbursement.

## **7. Rulemaking**

### Emergency Rule 2006

Mr. Rubsam discussed Emergency Rule 2006, DWD Chapters 127 and 128. This rule relates to work search actions, availability for work and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic. The rule became effective on May 9, 2020 and will expire on October 5, 2020. Work searches are not required during the public health emergency. The work search waiver will expire on October 5<sup>th</sup>, and work searches will be waived through October 10, 2020. Work searches will be required beginning the week of October 11<sup>th</sup>.

Mr. Hayden stated that he does not expect the public health crisis to end by October 5<sup>th</sup>. Mr. Hayden asked if there is a way to extend the emergency rule.

Mr. Rubsam stated that the rule can be extended by 60 days by application to the Legislature's Joint Committee for the Review of Administrative Rules at least 30 days before the expiration of the rule, that date being September 4, 2020. There can be two 60-day extensions.

Mr. Rubsam also discussed provisions in the rule regarding availability for work while having COVID-19 symptoms or quarantined and provisions in the rule relating to work available.

### Emergency Rule 2011

Mr. Rubsam discussed Emergency Rule 2011, DWD Chapter 113. This rule relates to waiving interest in limited circumstances for employers subject to reimbursement financing when

reimbursements are delinquent due to COVID-19. This rule became effective on June 5, 2020 and expires on November 1, 2020. The waiver is retroactive to June 1, 2020. This rule gives the department latitude in certain circumstances to waive interest due by reimbursable employers. This is due to the provision in the CARES Act that requires reimbursable employers to pay 50% of benefit charges before applying for federal funds.

A council member stated there is a page on the department website that requires the employer to affirmatively request recharging for claims after May 16<sup>th</sup>. The member asked what does the department require after May 16<sup>th</sup>?

Mr. Rubsam stated that benefits related to initial claims filed before the expiration of the executive order will be recharged. For initial claims filed after the expiration of the executive order, the department will request that the employer explain why the employer thinks the initial claim is related to the executive order.

Ms. Knutson stated that information has been provided to employers on this subject. This information is not just on the website. It has been more broadly provided to employers.

Ms. Knutson was then asked how the request for information will be communicated to employers that it is related to the public health emergency.

Ms. Knutson stated that the employer must affirmatively state that the claim is related to the public health emergency. For those claims originating in the May through July period, the department is asking that the information be provided by the middle of August.

Mr. McHugh stated that information regarding recharging will be included in the employer charge statement that goes out four times a month, as well as with the rate notices.

### Emergency Rule 2018

Mr. Rubsam discussed Emergency Rule 2018, DWD Chapter 102. This emergency rule sets the contribution rates for employers for 2021. The rule went into effect on June 29, 2020 and ends on November 25, 2020. Act 185 requires charging benefits related to initial claims due to the public health emergency to the trust fund balancing account. The department will disregard an employer's benefit charges and adjustments between March 15<sup>th</sup> and June 30<sup>th</sup> in setting contribution rates for 2021.

Mr. McHugh stated that the department will back out more than \$500 million in benefit charges, and that this is an excellent deal for employers.

Mr. Hayden stated that the public health crisis is getting worse and not better. Mr. Hayden asked what the Council could do to extend the emergency rules.

Ms. Knutson stated that the Council is advisory and can provide feedback to the Secretary and could advise the department to seek an extension on the rules.

Mr. Manley stated that one-half of the employer Council representatives are not present at the meeting and that he would not feel comfortable saying the employer representatives either support or do not support an extension of the emergency rules.

Ms. Fechter stated that she concurs with Mr. Hayden's thoughts, and that it would be better to be proactive rather than reactive.

Mr. Griesbach stated that he agrees with his fellow Council members and that the Council should be proactive and extend the timeframes for the emergency rules.

Mr. Hayden asked if this issue could be addressed at the Council's August meeting.

Mr. Rubsam stated that requests for extensions of the emergency rules must be submitted to the Legislature 30 days before the rules expire.

Mr. Griesbach asked if the Council should have something drafted to review at the August meeting regarding emergency rule extensions.

Ms. Knutson clarified that the Council must have a meeting to act as a body. Ms. Knutson stated that there is an item on today's agenda about future meeting dates and the Council could talk about the issue then.

#### Emergency and Permanent Rule, DWD Chapter 120

Mr. Rubsam stated that the emergency and permanent rule proposals provide notification of the availability of unemployment insurance to employees at the time of separation. Additional federal funding is available if the department adopts the rule. The effective date of the proposed emergency rule will be November 2, 2020. This will give employers enough time to implement the rule and time for the department to promulgate the permanent rule.

Mr. Manley asked if an employer did not inform an employee of the availability of UI benefits, would the rule allow the employee to file for benefits after the period for filing for benefits had expired?

Mr. Rubsam stated that backdating is allowed under certain circumstances now. This rule would create circumstances that the employee could file and backdate the claim if the employee did not know that benefits were available.

Mr. Manley asked what the underlying statutory authority is to allow the claimant to backdate?

Mr. Rubsam stated that Administrative Code 129 provides a variety of circumstances when a claim could be backdated; specifically, DWD Rule 129.01(4).

Mr. Rubsam stated that the statutory authority is sections 108.04 (2)(c) and 108.08.

Mr. Manley stated that there will be an opportunity for public comment on the rule and that he will certainly do that.

Ms. Knutson clarified the rule is in draft form at this time. The rule is not in final form to be promulgated. There is a delayed effective date in the draft to give employers advance notice of the rule.

Ms. Knutson stated there is not a quorum present at the meeting today. Private caucus lines can be set up at the August meeting if one is held. The department will be seeking Council approval of this draft rule.

Mr. Hayden asked that to comply, does an employer has to have a posting on a bulletin board or by a form letter to the employee?

Mr. Rubsam stated the employer must email, text, mail or hand the employee the notification.

## **8. Public Hearing Requests**

Ms. Knutson stated that the public hearing schedule will be deferred to the next meeting.

## **9. Research Requests**

There were no research requests.

## **10. Future Meeting Dates**

Ms. Knutson stated that the Council will be polled for a meeting date in August of 2020 and some alternative dates. The department will set up caucus lines.

## **11. Adjourn**

The meeting was adjourned at 12:01 pm.

## UI Reserve Fund Highlights

August 20, 2020

- Benefit payments through August 15 total \$1 billion, an increase of \$765.8 million or 285.7% when compared to benefits paid through the same week in 2019.

Benefits Paid	<b>2020 YTD*</b> <i>(in millions)</i>	<b>2019 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Regular UI Paid**	\$1,033.9	\$268.1	\$765.8	285.7%

*\*\* Total Regular UI Paid includes payments funded by employers through the UI Trust Fund. It excludes benefits funded and reimbursed to the state by the federal government and reimbursable employers.*

Claimants have been paid over \$3.5 billion in a combination of federal and state programs since the beginning of the year.

There have been 508,245 claimants paid this year. For comparison, in calendar year 2018 and 2019, the number of claimants paid were 130,710 and 129,888, respectively. Since 2002, the only years that exceeded half a million claimants were 2009 and 2010.

The federal programs include:

Program	UI Paid
Federal Pandemic Unemployment Compensation (FPUC)	\$2.3 billion
Pandemic Unemployment Assistance (PUA)	\$83.7 million
Pandemic Emergency Unemployment Compensation (PEUC)	\$27.9 million

**FPUC** was the additional \$600 per week benefit which expired the week ending July 25, 2020.

**PUA** provides up to 39 weeks of unemployment benefits to individuals who are not eligible for regular UI such as:

- Individuals who are self-employed;
- Certain independent contractors;
- Individuals with limited recent work history; and
- Other workers not covered by Regular UI.

**PEUC** provides up to 13 additional weeks of payments to individuals who have exhausted their regular UI benefits.

- Tax receipts through August 15, 2020, declined by \$40 million or 8.6% when compared to tax receipts through the same period in 2019. Since both tax years were rated in Schedule D, any change reflects the anticipated reduction in taxes based on improvement of employer's experience but also a reduction in taxable wages.

Tax Receipts	<b>2020 YTD*</b> <i>(in millions)</i>	<b>2019 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Tax Receipts	\$427.8	\$467.8	(\$40.0)	(8.6%)

*\*All calendar year-to-date (YTD) numbers are through August 15, 2020 and a comparable 2019 period. The Financial statements for July are not yet final as of this meeting date.*

3. The trust fund balance on August 18, 2020, was \$1.37 billion.

Interest earned on the Trust Fund is received quarterly. Interest for the first two quarters of 2020 was \$22.4 million compared to \$21 million for the same period last year. The U.S. Treasury annualized interest rate for this quarter is 2.4%.

<b>UI Trust Fund Interest</b>	<b>2020 YTD*</b> <i>(in millions)</i>	<b>2019 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Interest Earned	\$22.4	\$21.0	\$1.4	6.7%

*\*All calendar year-to-date (YTD) numbers are through August 15, 2020 and a comparable 2019 period. The Financial statements for July are not yet final as of this meeting date.*

# FINANCIAL STATEMENTS

For the Month Ended June 30, 2020



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
BALANCE SHEET  
FOR THE MONTH ENDED June 30, 2020

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
<b>CASH:</b>		
U.I. CONTRIBUTION ACCOUNT	(657,159.33)	1,027,965.32
U.I. BENEFIT ACCOUNTS	(20,023,714.61)	(2,103,180.22)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,585,943,737.42</u>	<u>1,877,749,107.27</u>
TOTAL CASH	1,565,262,863.48	1,876,673,892.37
<b>ACCOUNTS RECEIVABLE:</b>		
BENEFIT OVERPAYMENT RECEIVABLES	65,640,460.16	71,385,436.92
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(30,839,159.09)</u>	<u>(33,473,004.00)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	34,801,301.07	37,912,432.92
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	34,993,274.63	37,611,059.06
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(16,208,225.92)</u>	<u>(15,974,324.17)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	18,785,048.71	21,636,734.89
OTHER EMPLOYER RECEIVABLES	64,981,567.16	22,441,004.24
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(9,413,133.96)</u>	<u>(8,550,910.76)</u>
NET OTHER EMPLOYER RECEIVABLES	55,568,433.20	13,890,093.48
TOTAL ACCOUNTS RECEIVABLE	<u>109,154,782.98</u>	<u>73,439,261.29</u>
TOTAL ASSETS	<u><u>1,674,417,646.46</u></u>	<u><u>1,950,113,153.66</u></u>
<b><u>LIABILITIES AND EQUITY</u></b>		
<b>LIABILITIES:</b>		
CONTINGENT LIABILITIES (7)	26,481,790.61	27,615,755.64
OTHER LIABILITIES	13,821,258.16	12,955,136.76
FEDERAL BENEFIT PROGRAMS	(17,058,437.58)	217,288.48
CHILD SUPPORT HOLDING ACCOUNT	175,489.00	46,003.00
FEDERAL WITHHOLDING TAXES DUE	4,911,249.00	166,560.00
STATE WITHHOLDING TAXES DUE	68,274,919.97	1,660,611.00
DUE TO OTHER GOVERNMENTS (8)	<u>372,427.46</u>	<u>343,869.30</u>
TOTAL LIABILITIES	96,978,696.62	43,005,224.18
<b>EQUITY:</b>		
RESERVE FUND BALANCE	1,992,159,288.39	2,381,444,112.04
BALANCING ACCOUNT	<u>(414,720,338.55)</u>	<u>(474,336,182.56)</u>
TOTAL EQUITY	<u>1,577,438,949.84</u>	<u>1,907,107,929.48</u>
TOTAL LIABILITIES AND EQUITY	<u><u>1,674,417,646.46</u></u>	<u><u>1,950,113,153.66</u></u>

1. \$20,806,685 of this balance is for administration purposes and is not available to pay benefits.
2. \$2,176,513 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. \$8,666,600 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-52/20 per 2103 of the CARES Act.
4. The allowance for uncollectible benefit overpayments is 50.2%. The allowance for uncollectible delinquent employer taxes is 46.3%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.
5. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$4,766,793. Deferrals for the prior year were \$3,579,338.
6. \$10,178,297, or 29.1%, of this balance is estimated.
7. \$13,674,678 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$12,807,113 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.
8. This balance includes SAFI Payable of \$5,815. The 06/30/2020 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$19,953. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were \$9,501,460.

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RESERVE FUND ANALYSIS  
FOR THE MONTH ENDED June 30, 2020

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,611,290,889.35	2,909,863,506.12	2,794,896,813.36
BALANCING ACCOUNT	<u>(873,333,269.27)</u>	<u>(916,159,078.07)</u>	<u>(1,030,187,761.19)</u>
TOTAL BALANCE	1,737,957,620.08	1,993,704,428.05	1,764,709,052.17
<b>INCREASES:</b>			
TAX RECEIPTS/RFB PAID	1,598,303.81	225,039,787.42	238,538,511.51
ACCRUED REVENUES	(589,409.11)	7,671,233.38	8,158,633.56
SOLVENCY PAID	276,764.46	95,877,207.48	98,309,101.09
FORFEITURES	13,585.72	74,465.72	25,287.00
BENEFIT CONCEALMENT INCOME	24,964.17	364,645.41	413,730.72
INTEREST EARNED ON TRUST FUND	10,551,429.02	22,425,381.53	20,995,429.94
FUTA TAX CREDITS	0.00	2,686.15	14,350.81
OTHER CHANGES	<u>7,894,247.52</u>	<u>27,783,428.55</u>	<u>219,946.19</u>
TOTAL INCREASES	19,769,885.59	379,238,835.64	366,674,990.82
<b>DECREASES:</b>			
TAXABLE EMPLOYER DISBURSEMENTS	149,350,787.32	678,772,552.43	190,901,829.11
QUIT NONCHARGE BENEFITS	26,406,681.40	98,843,038.14	27,520,763.99
OTHER DECREASES	215,807.51	274,386.12	(2,625,416.34)
OTHER NONCHARGE BENEFITS	<u>4,315,279.60</u>	<u>17,614,337.16</u>	<u>8,478,936.75</u>
TOTAL DECREASES	180,288,555.83	795,504,313.85	224,276,113.51
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	1,992,159,288.39	1,992,159,288.39	2,381,444,112.04
BALANCING ACCOUNT	<u>(414,720,338.55)</u>	<u>(414,720,338.55)</u>	<u>(474,336,182.56)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,577,438,949.84</u></u>	<u><u>1,577,438,949.84</u></u>	<u><u>1,907,107,929.48</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,541,064,910 because of non-cash accrual items.

10. \$20,806,685 of this balance is set up in the Trust Fund in three subaccounts to be used for administration purposes and is not available to pay benefits.

11. \$2,176,513 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$8,666,600 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-52/20 per 2103 of the CARES Act.

**DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RECEIPTS AND DISBURSEMENTS STATEMENT  
FOR THE MONTH ENDED 06/30/20**

<b>RECEIPTS</b>	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE</u>	<u>PRIOR YEAR TO DATE</u>
TAX RECEIPTS/RFB	\$1,598,303.81	\$225,039,787.42	\$238,538,511.51
SOLVENCY	276,764.46	95,877,207.48	98,309,101.09
ADMINISTRATIVE FEE	67.70	328.27	442.38
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	5,875.19	2,217,038.24	2,200,267.32
UNUSED CREDITS	296,096.44	1,630,484.31	2,632,834.78
GOVERNMENTAL UNITS	10,195,242.57	17,794,159.69	5,838,763.40
NONPROFITS	15,595,267.07	26,257,679.77	5,158,338.04
INTERSTATE CLAIMS (CWC)	650,431.46	1,586,136.10	2,647,400.26
ERROR SUSPENSE	(3,283.78)	20,092.26	(605.82)
FEDERAL PROGRAMS RECEIPTS	595,389,310.13	1,583,687,442.95	(104,287.72)
OVERPAYMENT COLLECTIONS	2,087,568.30	10,742,576.10	10,332,653.34
FORFEITURES	13,585.72	74,465.72	25,287.00
BENEFIT CONCEALMENT INCOME	24,964.17	364,645.41	413,730.72
EMPLOYER REFUNDS	(349,909.20)	(2,333,585.31)	(2,322,076.95)
COURT COSTS	19,054.44	198,937.24	254,037.98
INTEREST & PENALTY	252,191.43	1,763,112.31	1,884,733.67
CARD PAYMENT SERVICE FEE	805.24	7,087.32	1,224.69
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	41,801.79	577,001.90	632,218.01
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	(357.75)	3,184.41	25,000.00
SPECIAL ASSESSMENT FOR INTEREST	2,982.42	10,247.26	11,313.22
EMERGENCY ADMIN GRANT-EUISAA 2020	0.00	18,914,772.00	0.00
EMERGENCY UC RELIEF (EUR)	7,809,600.00	8,666,600.00	0.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	10,551,429.02	22,425,381.53	20,995,429.94
MISCELLANEOUS	68,715.37	82,569.01	41,046.10
TOTAL RECEIPTS	<u>\$644,526,506.00</u>	<u>\$2,015,607,351.39</u>	<u>\$387,515,362.96</u>
<b>DISBURSEMENTS</b>			
CHARGES TO TAXABLE EMPLOYERS	\$151,259,441.11	\$686,539,760.90	\$199,321,141.56
NONPROFIT CLAIMANTS	15,018,985.26	47,296,402.46	4,616,168.99
GOVERNMENTAL CLAIMANTS	10,855,917.70	32,584,867.95	5,000,329.50
INTERSTATE CLAIMS (CWC)	1,825,494.69	6,356,682.36	2,255,260.23
QUITS	26,406,681.40	98,843,038.14	27,520,763.99
OTHER NON-CHARGE BENEFITS	3,812,940.36	16,455,774.00	8,655,115.26
CLOSED EMPLOYERS	3,014.99	(214,453.45)	(9,698.75)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	242,203.93	1,083,422.02	745,382.92
EX-MILITARY (UCX)	180,796.54	657,072.56	225,484.35
TRADE ALLOWANCE (TRA/TRA-NAFTA)	78,927.00	532,564.09	663,093.10
DISASTER UNEMPLOYMENT (DUA)	0.00	0.00	19,310.00
FEDERAL PANDEMIC UC \$600 ADD-ON (FPUC)	535,496,085.74	1,578,083,171.75	0.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	12,236,159.00	13,293,356.00	0.00
PANDEMIC EMERGENCY UC (PEUC)	8,661,395.00	8,661,395.00	0.00
2003 TEMPORARY EMERGENCY UI (TEUC)	(3,017.06)	(12,442.92)	(11,852.07)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(17,350.49)	(114,802.91)	(162,897.94)
FEDERAL EMERGENCY UI (EUC)	(133,456.75)	(1,125,122.70)	(1,478,268.20)
FEDERAL EXTENDED BENEFITS (EB)	(16,210.82)	(109,383.12)	(108,410.60)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	0.00	0.00	(1,331.67)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(386.30)	(2,052.97)	(2,693.17)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(606.13)	(3,224.15)	(846.40)
INTEREST & PENALTY	330,092.42	1,786,762.44	1,914,594.89
CARD PAYMENT SERVICE FEE TRANSFER	994.38	7,259.79	626.53
PROGRAM INTEGRITY	69,402.81	2,827,047.57	2,860,447.99
SPECIAL ASSESSMENT FOR INTEREST	0.00	11,336.04	11,439.97
COURT COSTS	16,822.98	220,533.15	256,179.91
ADMINISTRATIVE FEE TRANSFER	45.11	389.24	450.90
FEDERAL WITHHOLDING	492,931.00	(4,754,451.06)	10,036.00
STATE WITHHOLDING	(23,200,112.51)	(66,533,536.72)	(73,123.20)
STC IMPLEMENT/IMPROVE & PROMOTE/ENROLL EXP	0.00	0.00	114,151.84
FEDERAL LOAN REPAYMENTS	0.00	(2,686.15)	(14,350.81)
TOTAL DISBURSEMENTS	<u>\$743,617,191.36</u>	<u>\$2,422,368,679.31</u>	<u>\$252,326,505.12</u>
NET INCREASE(DECREASE)	<u>(99,090,685.36)</u>	<u>(406,761,327.92)</u>	<u>135,188,857.84</u>
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,664,353,548.84	\$1,972,024,191.40	\$1,741,485,034.53
BALANCE AT END OF MONTH/YEAR	<u>\$1,565,262,863.48</u>	<u>\$1,565,262,863.48</u>	<u>\$1,876,673,892.37</u>

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
CASH ANALYSIS  
FOR THE MONTH ENDED June 30, 2020

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,699,686,453.64	\$1,960,524,402.01	\$1,730,835,304.79
INCREASES:			
TAX RECEIPTS/RFB PAID	1,598,303.81	225,039,787.42	238,538,511.51
U.I. PAYMENTS CREDITED TO SURPLUS	9,527,230.83	128,586,918.21	100,985,780.82
INTEREST EARNED ON TRUST FUND	10,551,429.02	22,425,381.53	20,995,429.94
FUTA TAX CREDITS	0.00	2,686.15	14,350.81
TOTAL INCREASE IN CASH	<u>21,676,963.66</u>	<u>376,054,773.31</u>	<u>360,534,073.08</u>
TOTAL CASH AVAILABLE	<u>1,721,363,417.30</u>	<u>2,336,579,175.32</u>	<u>2,091,369,377.87</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	149,350,787.32	678,772,552.43	190,901,829.11
BENEFITS CHARGED TO SURPLUS	30,947,719.97	116,741,712.88	36,500,788.50
TOTAL BENEFITS PAID DURING PERIOD	<u>180,298,507.29</u>	<u>795,514,265.31</u>	<u>227,402,617.61</u>
SHORT-TIME COMPENSATION EXPENDITURES	0.00	0.00	114,151.84
ENDING U.I. CASH BALANCE (13) (14) (15) (16) (17)	<u><u>1,541,064,910.01</u></u>	<u><u>1,541,064,910.01</u></u>	<u><u>1,863,852,608.42</u></u>

13. \$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.

14. \$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.

15. \$18,914,772 of this balance was set up in 2020 in the Trust Fund as an Emergency Admin Grant (EUISAA) subaccount to be used for administration of the Unemployment Compensation Program and is not available to pay benefits.

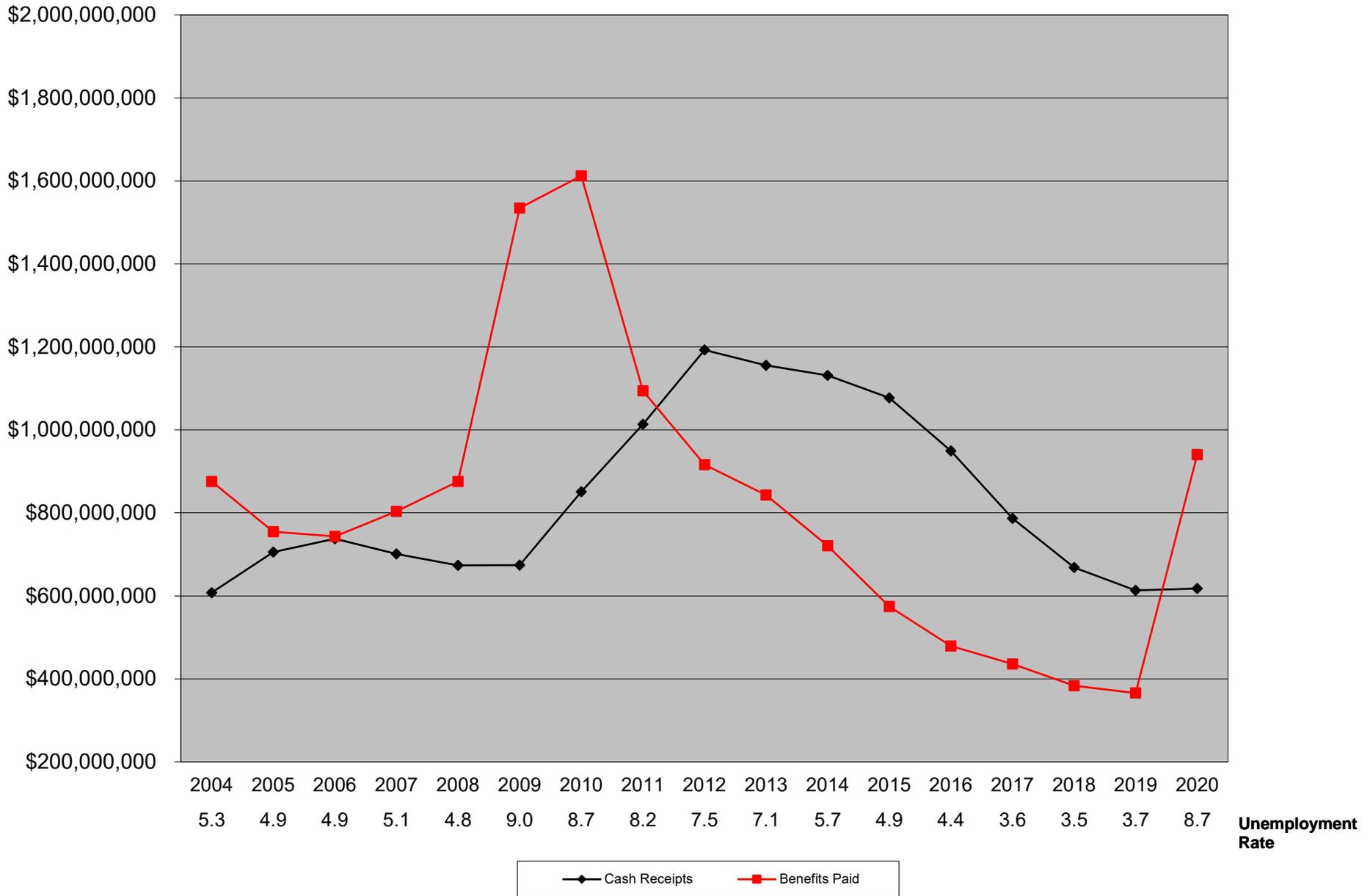
16. \$2,176,513 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

17. \$8,666,600 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-52/20 per 2103 of the CARES Act.

BUREAU OF TAX AND ACCOUNTING  
U.I. TREASURER'S REPORT  
BALANCING ACCT SUMMARY  
FOR THE MONTH ENDED June 30, 2020

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$458,165,237.54)	(\$503,517,440.13)	(\$617,016,324.88)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	276,764.46	95,877,207.48	98,309,101.09
FORFEITURES	13,585.72	74,465.72	25,287.00
OTHER INCREASES	9,236,880.65	32,635,245.01	2,651,392.73
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	<u>9,527,230.83</u>	<u>128,586,918.21</u>	<u>100,985,780.82</u>
TRANSFERS BETWEEN SURPLUS ACCTS	17,939,919.28	18,149,788.74	14,044,200.03
INTEREST EARNED ON TRUST FUND	10,551,429.02	22,425,381.53	20,995,429.94
FUTA TAX CREDITS	0.00	2,686.15	14,350.81
TOTAL INCREASES	<u>38,018,579.13</u>	<u>169,164,774.63</u>	<u>136,039,761.60</u>
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	26,406,681.40	98,843,038.14	27,520,763.99
OTHER NON-CHARGE BENEFITS	4,541,038.57	17,898,674.74	8,980,021.51
MISCELLANEOUS EXPENSE	0.00	0.00	3.00
BENEFITS CHARGED TO SURPLUS SUBTOTAL	<u>30,947,719.97</u>	<u>116,741,712.88</u>	<u>36,500,788.50</u>
SHORT-TIME COMPENSATION EXPENDITURES	0.00	0.00	114,151.84
BALANCE AT THE END OF THE MONTH/YEAR	<u><u>(451,094,378.38)</u></u>	<u><u>(451,094,378.38)</u></u>	<u><u>(517,591,503.62)</u></u>

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



August 20, 2020

Dear Members of the Unemployment Insurance Advisory Council:

In 2016, the Council and Legislature approved a law authorizing a 0.01% assessment of employers for program integrity efforts, which is offset by a corresponding reduction in the solvency tax. This assessment maintains funding for anti-fraud and other program integrity efforts.

The law requires me to consult with the Council and to consider the balance of the Unemployment Insurance Trust Fund before approving the assessment. The assessment notice must be published by November 30.

In weighing the need for continued funding of program integrity efforts with Trust Fund balance, **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 \$3.3 million for the year. This represents 2.3% of the total UI operating budget for State FY21;
- The Trust Fund balance on August 17, 2020 was about \$1.387 billion. The projected assessment amount represents about 0.24% of this balance;
- For federal FY21, we are not expecting US-DOL to substantially change our UI operating grant, but we are experiencing significant increases in operating expenses due to pandemic-related staffing; and,
- The March 2020 fraud report showed that fraudulent overpayment activity fell by 3.5% from 2018 to 2019, which shows that our efforts are working. Unfortunately, with the **historic claims levels** due to the pandemic, we have seen an increase in fraud—including identity theft. Investing the funds in program integrity is especially important now.

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. I value your consideration and service to the Department and the citizens of Wisconsin.

Sincerely,



Caleb Frostman, Secretary

Public Law 116–151  
116th Congress

An Act

Aug. 3, 2020  
[S. 4209]

To amend title IX of the Social Security Act to improve emergency unemployment relief for governmental entities and nonprofit organizations.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Protecting  
Nonprofits from  
Catastrophic  
Cash Flow Strain  
Act of 2020.  
42 USC 1305  
note.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020”.

**SEC. 2. IMPROVING EMERGENCY UNEMPLOYMENT RELIEF FOR GOVERNMENTAL ENTITIES AND NONPROFIT ORGANIZATIONS.**

(a) **IN GENERAL.**—Section 903(i)(1) of the Social Security Act (42 U.S.C. 1103(i)(1)) is amended—

(1) in subparagraph (A), by striking “during” and inserting “with respect to”;

(2) in subparagraph (B), by striking “3309(a)(1)” and inserting “3309(a)”; and

(3) by striking subparagraph (C) and inserting the following new subparagraph:

“(C) Notwithstanding any other provision of law, funds transferred to the account of a State under subparagraph (A) shall be used exclusively to reduce the amounts required to be paid in lieu of contributions into the State unemployment fund pursuant to such section by governmental entities and other organizations described in section 3309(a) of such Code.”.

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the amendments made by subsection (a) shall take effect as if included in the enactment of section 2103 of the Relief for Workers Affected by Coronavirus Act (contained in subtitle A of title II of division A of the CARES Act (Public Law 116–136)).

(2) **APPLICATION TO WEEKS PRIOR TO ENACTMENT.**—For weeks of unemployment that occurred after March 12, 2020, and prior to the date of enactment of this section, States may—

(A) issue reimbursements in accordance with section 903(i)(1)(C) of the Social Security Act, as in effect prior to the date of enactment of this section; or

42 USC 1103  
note.

(B) reduce the amounts required to be paid in accordance with such section 903(i)(1)(C), as amended by subsection (a).

Approved August 3, 2020.

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LEGISLATIVE HISTORY—S. 4209:

CONGRESSIONAL RECORD, Vol. 166 (2020):

July 2, considered and passed Senate.

July 9, considered and passed House.





## PRESIDENTIAL MEMORANDA

# Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019

— ECONOMY &amp; JOBS

Issued on: August 8, 2020



MEMORANDUM FOR THE SECRETARY OF LABOR  
THE SECRETARY OF HOMELAND SECURITY  
THE ADMINISTRATOR OF THE FEDERAL EMERGENCY  
MANAGEMENT AGENCY

SUBJECT: Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the “Stafford Act”), and in light of Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak), which declared a national emergency by reason of the threat posed by the outbreak of the novel (new) coronavirus known as SARS-CoV-2, it is hereby ordered as follows:

Section 1. Policy. Protective measures enacted by States and localities across the country to prevent loss of life from COVID-19 have resulted in millions of Americans becoming unemployed and in need of assistance. My Administration, recognizing the acute financial distress affecting families across the country, has worked to quickly provide billions of dollars in relief to supplement

unemployment benefits and help businesses keep their workers employed, in addition to zeroing Federal student loan interest and delaying Tax Day. In total, nearly \$3 trillion has been appropriated for emergency funding related to COVID-19.

Because many of the relief programs created by the Congress have expired or will shortly expire, my Administration and the Republican leadership in the United States Senate have proposed multiple options to continue to provide needed relief to Americans. But Democratic Members of Congress have twice blocked temporary extensions of supplemental unemployment benefits. Political games that harm American lives are unacceptable, especially during a global pandemic, and therefore I am taking action to provide financial security to Americans.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116-136) included \$150 billion appropriated directly to State, territorial, tribal, and some local governments through the Coronavirus Relief Fund (CRF) to cover costs incurred due to the COVID-19 emergency. As of the latest report from the Treasury Inspector General regarding State expenditures, more than \$80 billion of CRF dollars remain available, to supplement the billions of dollars States have received in other Federal assistance, such as the \$8.8 billion in emergency assistance provided under the Stafford Act (42 U.S.C. 5121 *et seq.*). In addition, the Department of Homeland Security's Disaster Relief Fund (DRF), has more than \$70 billion in emergency assistance funding available.

I am hereby directing the Federal Emergency Management Agency (FEMA) to assist in providing benefits from the DRF, and am calling upon the States to use their CRF allocation, to bring continued financial relief to Americans who are suffering from unemployment due to the COVID-19 outbreak.

Sec. 2. Providing Disaster Relief Funds. On March 13, 2020, I declared a national emergency recognizing the threat posed by COVID-19. I also determined that same day that the COVID-19 outbreak constituted an emergency, of nationwide scope, pursuant to section 501(b) of the Stafford Act (42 U.S.C. 5191(b)). All States have activated their Emergency Operations Centers and are working to fight the spread of the virus. As of April 18, 2020, I have declared that a major disaster exists in all States and territories as a result of the virus, and have authorized Emergency Protective Measures (Category B) pursuant to section 403 of the Stafford Act (42 U.S.C. 5170b) for each.

To provide financial assistance for the needs of those who have lost employment as a result of the pandemic, I am directing up to \$44 billion from the DRF at the statutorily mandated 75 percent

Federal cost share be made available for lost wages assistance to eligible claimants, to supplement State expenditures in providing these payments. At least \$25 billion of total DRF balances will be set aside to support ongoing disaster response and recovery efforts and potential 2020 major disaster costs.

Sec. 3. State Allocation. I am calling on States to use amounts allocated to them out of the CRF, or other State funding, to provide temporary enhanced financial support to those whose jobs or wages have been adversely affected by COVID-19. These funds, including those currently used to support State unemployment insurance programs, may be applied as the State's cost share with Federal DRF funds. To ensure that those affected by a loss in wages due to COVID-19 continue to receive supplemental benefits for weeks of unemployment ending no later than December 27, 2020, States should also identify funds to be spent without a Federal match should the total DRF balance deplete to \$25 billion.

Sec. 4. Assistance Program for Lost Wages. (a) For purposes of this memorandum, "State" includes the territories and the District of Columbia, and "Governor" includes the chief executive thereof.

(b) To help meet the needs of the American people during this unprecedented and continuously evolving public health crisis, the Secretary of Homeland Security (Secretary), acting through the FEMA Administrator, is authorized to make available other needs assistance for lost wages, in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2)) ("lost wages assistance"), to the people of a State, including the members of any tribe residing therein, if the Governor requests lost wages assistance and agrees to administer delivery and provide adequate oversight of the program, for a major disaster I declared pursuant to section 401 of the Stafford Act (42 U.S.C. 5170) for COVID-19, under the following conditions:

(i) the Governor requests from the FEMA Administrator a grant for lost wages assistance pursuant to 42 U.S.C. 5174(f)(1)(A) and agrees to the cost-sharing requirement of 42 U.S.C. 5174(g)(2); and

(ii) the Governor administers delivery of financial assistance for lost wages in conjunction with the State's unemployment insurance system.

(c) In exercising this authority, the Secretary, acting through the FEMA Administrator, shall, subject to the limitations above, approve a lost wages assistance program that authorizes the Governor to

provide a \$400 payment per week, which shall reflect a \$300 Federal contribution, to eligible claimants from the week of unemployment ending August 1, 2020.

(d) For purposes of this memorandum, the term “Eligible claimants” means claimants who:

(i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:

(A) Unemployment compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Service members (UCX), under section 8501 of title 5, United States Code;

(B) Pandemic Emergency Unemployment Compensation (PEUC), under section 2107 of the CARES Act;

(C) Pandemic Unemployment Assistance (PUA), under section 2102 of the CARES Act;

(D) Extended Benefits (EB), under section 3304 of title 26, United States Code;

(E) Short-Time Compensation (STC), under section 3306(v) of title 26, United States Code;

(F) Trade Readjustment Allowance (TRA), under sections 2291 through 2293 of title 19, United States Code; and

(G) Payments under the Self-Employment Assistant (SEA) program, under section 3306(t) of title 26, United States Code; and

(ii) provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.

(e) The authority vested in the Secretary, acting through the FEMA Administrator, to approve lost wages assistance shall not be construed to encompass authority to approve other forms of assistance.

Sec. 5. Additional Assistance. The Secretary of Labor shall provide, as appropriate, and consistent with applicable law, technical assistance to the FEMA Administrator and Governors in the implementation of lost wages assistance programs, including timely processing of advances from the Federal unemployment account pursuant to section 1321 of title 42, United States Code 321.

Sec. 6. Termination. (a) The lost wages assistance program described in section 4(b) of this memorandum shall be available for eligible claimants until the balance of the DRF reaches \$25 billion or for weeks of unemployment ending not later than December 6, 2020, whichever occurs first, at which time the lost wages assistance program shall terminate.

(b) The lost wages assistance program shall terminate upon enactment of legislation providing, due to the COVID-19 outbreak, supplemental Federal unemployment compensation, or similar compensation, for unemployed or underemployed individuals.

Sec. 7. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DFAS
	DATE August 12, 2020

**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 27-20**

**TO:** STATE WORKFORCE AGENCIES

**FROM:** JOHN PALLASCH /s/  
Assistant Secretary

**SUBJECT:** Presidential Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019 (COVID-19)—Unemployment Insurance (UI)-Related Technical Assistance for States Administering Lost Wages Assistance (LWA)

1. **Purpose.** To provide states with Unemployment Insurance (UI)-related technical assistance for administering LWA provided under Section 408(e)(2) in the Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act (42 U.S.C. 5174(e)(2)), as authorized by the Presidential Memorandum, *Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019*, issued on August 8, 2020.
2. **Action Requested.** The U.S. Department of Labor’s (Department) Employment and Training Administration (ETA) requests State Workforce Administrators to provide the information contained in this Unemployment Insurance Program Letter (UIPL) to appropriate program and other staff in state workforce systems.
3. **Summary and Background.**
  - a. Summary – On August 8, 2020, the President issued a memorandum, *Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* (Presidential Memo), instructing the Secretary of Homeland Security, acting through the Federal Emergency Management Agency (FEMA), to make available other needs assistance (ONA) for lost wages in accordance with Section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2)). LWA will be administered by states and territories through a grant agreement with FEMA. FEMA will not administer benefits directly to individuals. The states and territories will distribute the funds through their UI system, as a supplemental payment. The Presidential Memo also directed the Department to provide FEMA and the states with technical assistance in the implementation of the program through their existing UI systems.

To apply for a grant from FEMA to implement the LWA program, states may find information on the application process at the FEMA website at <https://www.fema.gov/disasters/coronavirus/supplemental-payments-lost-wages> and at

RESCISSIONS None	EXPIRATION DATE Continuing
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Grants.gov application at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=328611>.

Upon a grant award by FEMA, states and territories may provide eligible claimants \$400 per week, with a \$300 federal contribution, in addition to the individual's underlying unemployment benefit. LWA is funded using a 75 percent federal cost share and a 25 percent state match. If states wish to provide this maximum \$400 benefit to their claimants, they may fund \$100 out of amounts allocated to them out of the Coronavirus Relief Fund (CRF), provided under Title V of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136), or other state funding to cover the 25 percent state match.

Alternatively, states may count funds that are already used to provide regular state UI payments toward the state match, if they choose to do so, eligible claimants will receive a LWA payment of \$300 from the Federal Government in addition to their weekly benefit amount. This is discussed further below.

We acknowledge that American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are eligible to participate in the LWA program, though they do not have an underlying UI program. Technical assistance will be provided separately to these territories regarding the state match.

LWA is payable to eligible claimants beginning with weeks of unemployment ending on or after August 1, 2020, through weeks of unemployment ending no later than December 27, 2020.

The LWA program may terminate earlier than December 27, 2020, if:

- FEMA expends the \$44 billion from the Disaster Relief Fund (DRF) account designated by the President for the LWA program; or
- The total balance of the DRF account decreases to \$25 billion; or
- Legislation is enacted that provides, due to the COVID-19 outbreak, supplemental federal unemployment compensation or similar compensation for unemployed or underemployed individuals.

The Presidential Memo requires the Secretary of Labor to provide, as appropriate, and consistent with applicable law, technical assistance to FEMA and state governors in the implementation of LWA programs. This UIPL provides technical assistance to states and includes: (i) a summary of the requirements for "eligible claimants," as further described on the FEMA website; (ii) important program dates; and (iii) financial instructions related to benefit costs and administrative costs.

- b. Background—The CARES Act was signed into law by the President on March 27, 2020, and includes the Relief for Workers Affected by Coronavirus Act set out in Division A, Title II, Subtitle A, as well as the CRF set out in Title V. The CARES Act provides

emergency assistance for certain individuals, families, and businesses affected by the COVID-19 pandemic.

Section 2104 of the CARES Act provided for a temporary emergency increase in unemployment compensation benefits, referred to as Federal Pandemic Unemployment Compensation (FPUC), and included funding to states for the administration of such program. This program previously provided eligible individuals with \$600 per week in addition to the weekly benefit amount they received from certain other unemployment compensation (UC) programs. The Department issued UIPL Nos. 15-20 and 15-20, Change 1, setting forth operating and financial instructions for the FPUC program.

If a state chooses to implement LWA, an otherwise eligible individual could receive his or her last payment of FPUC for the week-ending July 25, 2020 and then his or her first week of LWA for the week-ending August 1, 2020 or later.

#### 4. **Guidance.**

- a. **Eligible Claimants.** As provided in the Presidential Memo, an “eligible claimant” is an individual who: (1) provides self-certification that he or she is unemployed or partially unemployed due to disruptions caused by COVID-19 and (2) receives, for the week of unemployment with respect to which LWA is sought, at least \$100 of regular UC or any of the following UC programs:

- Unemployment Compensation for Federal Employees (UCFE);
- Unemployment Compensation for Ex-Servicemembers (UCX);
- Pandemic Emergency Unemployment Compensation (PEUC);
- Pandemic Unemployment Assistance (PUA);
- Extended Benefits (EB);
- Short-Time Compensation (STC);
- Trade Readjustment Allowances (TRA); and
- Payments under the Self-Employment Assistance (SEA) program.

States will need to develop a self-certification process in accordance with FEMA instructions for claimants to certify weekly that they are unemployed or partially unemployed due to disruptions caused by COVID-19.

LWA is not payable to individuals collecting Disaster Unemployment Assistance (DUA). Additionally, a number of state laws include provisions for extending the potential duration of benefits during periods of high unemployment for individuals in approved training who exhaust benefits, or for a variety of other reasons. Although some state laws call these programs “extended benefits,” the Department uses the term “additional benefits” (AB) for these state programs to avoid confusion with the Federal-State EB program. LWA is not payable to individuals who are receiving AB payments.

For additional information for identifying eligible claimants, refer to the FEMA website.

- b. **Important Program Dates.** LWA is payable for weeks of unemployment ending on or after August 1, 2020, through weeks of unemployment ending before December 27, 2020 contingent upon sufficient balances remaining in the DRF.

Accordingly, in states where the week of unemployment ends on a Saturday, the first week that LWA may be paid is the week ending August 1, 2020. For states where the week of unemployment ends on a Sunday, the first week that LWA is payable is the week ending August 2, 2020.

LWA is not payable for any week of unemployment ending after December 27, 2020. Accordingly, for states where the week of unemployment ends on a Saturday, the last week that LWA may be paid is the week ending December 26, 2020. For states where the week of unemployment ends on a Sunday, the last week that LWA is payable is the week ending December 27, 2020.

However, the LWA program may terminate earlier if:

- FEMA expends the \$44 billion from the DRF account designated by the President for the LWA program; or
- The balance of the DRF decreases to \$25 billion; or
- Legislation is enacted that provides, due to the COVID-19 outbreak, supplemental federal unemployment compensation or similar compensation for unemployed or underemployed individuals.

For additional information regarding termination of the program, refer to the FEMA website.

- c. **Financial Instructions.**

*Benefit Costs.* Upon a grant award by FEMA, states and territories may provide eligible claimants \$400 per week, with a \$300 federal contribution. LWA is funded using a 75 percent federal cost share and 25 percent state match. For information regarding the federal cost share, refer to the FEMA website.

If states wish to provide this maximum benefit to their claimants, they may pay an additional \$100 per claimant per week using amounts allocated to them out of the CRF, provided under Title V of the CARES Act (Public Law 116-136), or other state funding to cover the 25 percent state match.

States may meet the \$100 per claimant per week state match with the payments they make for regular state UI benefits to claimants that also meet the requirement to be unemployed or partially unemployed as a result of COVID-19 if they choose to do so. This includes states in borrowing status pursuant to Title XII of the Social Security Act. In this case eligible claimants will only receive a LWA payment of \$300 in addition to their weekly benefit amount.

If a state chooses to use another state funding source (e.g., CRF or general revenue) besides those currently supporting the state UI program to cover the 25 percent state match, eligible claimants will receive a total LWA payment of \$400 in addition to their weekly benefit amount. The \$400 consists of \$300 from the federal cost share and \$100 from the state match. The Presidential Memo does not change any requirements for using a state's unemployment account within the Unemployment Trust Fund.

*Administrative Costs.* Administrative funding for the LWA program, including changes to existing UI systems to accommodate the program, is provided by FEMA. For information regarding the available federal administrative funds, refer to the FEMA website.

Federal grants for administration of state UC law may not be used to pay for any part of the costs of administration of LWA. In addition, if any state staff or other assets (e.g., information technology, office space, utilities) are normally paid for with UC administrative funding, including from the state's UC state administrative grant or other sources of funding for UC administration (e.g., Reed Act funding) and are used to support the LWA program, then cost sharing agreements must be in place. LWA administrative funding must pay for the proportionate share of these resources used to support administration of LWA. Training and Employment Guidance Letter (TEGL) No. 06-02 provides additional information regarding indirect cost rates and cost allocation plans.

5. **Inquiries.** States should direct inquiries regarding LWA to [FEMA-IHPHelpdesk@fema.dhs.gov](mailto:FEMA-IHPHelpdesk@fema.dhs.gov). States may direct inquiries regarding the intersection of LWA with unemployment benefit programs to [covid-19@dol.gov](mailto:covid-19@dol.gov).

6. **References.**

- Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Division A, Title II, Subtitle A—Relief for Workers Affected by Coronavirus Act and Title V—Coronavirus Relief Funds (CRF);
- Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);
- Presidential Memorandum, *Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019*, issued August 8, 2020;
- UIPL No. 15-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Reporting Instructions and Questions and Answers*, issued May 9, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3946](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3946);
- UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued April 4, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9297](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297);
- TEGL No. 06-02, *Guidance on the Recovery of Indirect Costs*, issued August 21, 2002, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=1416](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1416);

- Grants.gov Application at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=328611>; and
- FEMA Website at <https://www.fema.gov/disasters/coronavirus/supplemental-payments-lost-wages>.

August 20, 2020

Dear Members of the Unemployment Insurance Advisory Council:

The Department promulgated three emergency rules in response to the COVID-19 pandemic to reduce the unprecedented economic burden on Wisconsin employers and employees. The emergency rules are:

- Emergency Rule 2006, DWD Chs. 127 and 128, related to work search actions, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic. This rule is effective until October 5, 2020.
- Emergency Rule 2011, DWD Ch. 113, related to waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19. This rule is effective until November 1, 2020.
- Emergency Rule 2018, DWD Ch. 102, related to employer contribution rates for 2021. This rule is effective until November 25, 2020.

Together, these emergency rules implement the recent changes to federal law to that direct states "to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers." 42 U.S.C. § 1103(h)(3)(B).

And, these emergency rules ensure that the Legislature's policy goals of 2019 Act 185 are met by setting employer contribution rates for 2021 without regard to the benefits paid during the pandemic.

This pandemic has not abated; the number of new COVID-19 infections has increased dramatically during the past several weeks. The emergency that was the basis for these emergency rules still exists. It is difficult to predict what the fall will bring for the economy and the unemployment program. We may see continued high unemployment and a lack of job opportunities for unemployed workers. These emergency rules also support employers by ensuring that their accounts are appropriately charged. Therefore, the Department will request a 60-day extension of each of the three emergency rules from the Joint Committee for the Review of Administrative Rules and I ask the Council to support this request. Any questions concerning the emergency rules should be directed to Janell Knutson, Director of the Bureau of Legal Affairs.

Thank you for your continued support of the Unemployment Insurance program.

Sincerely,



Caleb Frostman, Secretary

cc: Mark Reihl, Administrator, Unemployment Insurance Division  
Janell Knutson, Chair, Unemployment Insurance Advisory Council

**ORDER OF THE WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following rule *to renumber* DWD 128.001 (2) (a); and *to create* DWD 127.01 (2m), 128.001 (2) (ag), 128.01 (7), 128.02, and 128.025, relating to work search actions, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic.

The Governor approved the scope statement for this rule, SS 013-20, on March 19, 2020. The scope statement was published in register No. 771A4, on March 23, 2020, and was approved by the Department on April 3, 2020. This rule was approved by the Governor on May 5, 2020.

**Analysis Prepared by the Department of Workforce Development**

*Finding of Emergency*

The Department seeks to create provisions in Chapters DWD 127 and 128 in order to implement federal guidance (see Unemployment Insurance Program Letter No., 10-20, dated March 12, 2020) related to administering unemployment insurance benefit claims during the pandemic period related to the SARS-CoV-2 novel coronavirus, which causes the coronavirus disease 2019 (in this Analysis, the virus and disease will be referred to as “COVID-19”).

Additionally, by Executive Order # 72 (dated March 12, 2020), the Governor declared a public health emergency in order to protect the health and well-being of the state’s residents and directed state agencies to assist as appropriate in the state’s on-going response to the public health emergency. Furthermore, on March 13, 2020, the President declared a national emergency concerning the COVID-19 outbreak. On April 4, 2020, the President issued a major disaster declaration for Wisconsin due to COVID-19, retroactively to January 20, 2020. On March 18, 2020, the Governor issued an emergency order in response to COVID-19 to assist individuals affected by the disease by temporarily easing eligibility requirements for unemployment benefits. (See Emergency Order # 7). The rule supplants the emergency order.

*Statutes Interpreted*

Section 108.04, Stats.

*Statutory Authority*

Sections 108.04(2)(a)3., 108.04(2)(bd), and 108.14 (2), Stats.

### ***Explanation of Statutory Authority***

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under section 108.14 (2), Stats.

Individuals who claim unemployment insurance benefits must perform four actions to search for suitable work in each week for which a claim is filed unless a waiver of that requirement applies. The Department may, under s. 108.04(2)(a)3., Stats., by rule, determine what actions “constitute a reasonable search [for suitable work].”

Work search waivers are statutory, but under s. 108.04(2)(bd), Stats., the “department may, by rule...if doing so is necessary to comply with a requirement under federal law or is specifically allowed under federal law: modify the availability of any [work search] waiver” or “[e]stablish additional [work search] waivers....” Under 42 U.S.C. § 1103(h)(3)(B), states may waive the work search requirement during the COVID-19 pandemic.

### ***Related Statutes or Rules***

Section 323.10, Stats., permits the Governor to issue an executive order declaring a public health emergency. On March 12, 2020, the Governor issued Executive Order # 72 declaring a public health emergency related to the COVID-19 pandemic.

### ***Plain Language Analysis***

This rule provides, on a temporary basis, that a public health emergency constitutes four work search actions for each week that a claimant files an unemployment insurance claim.

This rule provides criteria for determining when unemployment insurance claimants are available for work during the COVID-19 pandemic. The rule also states that no work is actually available for employees affected by COVID-19 for the purposes of determining whether unemployment insurance claimants missed work available under section 108.04 (1) (a) to (bm), Stats.

### ***Summary of, and comparison with, existing or proposed federal statutes and regulations***

Federal law requires that state laws conform to and comply with federal requirements. 20 C.F.R. § 601.5.

Under Families First Coronavirus Response Act, Public Law 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), a state may receive a share of \$500 million of federal funding for administering the state’s unemployment insurance program if the “State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements....” 42 U.S.C. § 1103(h)(3)(B). Wisconsin’s share of the \$500 million is about \$9.457 million.

The EUISAA also provides that states have emergency flexibility to amend work search provisions: “EMERGENCY FLEXIBILITY.—Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID–19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law.” Public Law 116-127 § 4102(b).

Federal law generally requires unemployment benefit claimants to be available for work. *See* 42 U.S.C. § 503(a)(12); 20 C.F.R. §§ 604.3 and 604.5. According to the United States Department of Labor, “federal UC framework gives states significant flexibility to determine standards for ... availability to work ... in the context of COVID-19.” *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*, Unemployment Insurance Program Letter No. 10-20 (US-DOL, Mar. 12, 2020).

### ***Comparison with rules in adjacent states***

Other states have waived or relaxed requirements related to work search and have temporarily provided flexibility regarding availability for work by executive order, administrative rule, or statute in response to the COVID-19 pandemic.

Minnesota has waived work search during the COVID-19 by Minn. Emergency Executive Order 20-05.

Illinois has, by emergency rule, waived work search requirements for claimants who are temporarily laid off as a result of COVID-19. Illinois has also, by emergency rule, provided a clarifying example to find claimants available for work if they are required to be at home with a child but could telework.

Michigan has suspended work search and increased eligibility for benefits to quarantined workers under Mich. Executive Order 2020-10.

Iowa has waived work search requirements due to the COVID-19 pandemic.

### ***Summary of factual data and analytical methodologies***

The Department reviewed the current Wisconsin administrative rules, the Governor’s Emergency Orders, federal unemployment compensation law and United States Department of Labor guidance, and emergency rules and orders in other states to maximize Wisconsin’s receipt of federal funding and to clarify the law for claimants during the COVID-19 pandemic.

***Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis***

Under 2019 Wisconsin Act 185, unemployment insurance benefit claims related to the public health emergency declared on March 12, 2020 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The benefits will be charged as follows: 50% of the benefits will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement financing; the remaining 50% will be charged to the federal government under the federal Coronavirus Aid, Relief and Economic Security (CARES) Act. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020.

If a claim filed during the effective period of this rule is not related to the public health emergency declared on March 12, 2020, businesses, including small businesses, will incur charges to their account in the Trust Fund (for contribution employers) or will be required to reimburse the Trust Fund for the benefits (for reimbursable employers). Some of those claims might have been denied but for this rule if, for example, the claimants had not conducted four work search actions in each week (and if that requirement was not waived). Also, some of those claims might have been denied if the claimants missed work available. It is not possible to quantify the effect of this rule on small business due to this variety of factors.

***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

***Effect on small business***

The proposed rule may affect small businesses, as defined in s. 227.114 (1), Stats., if employees of small businesses are found to be eligible for unemployment benefits and if they would not have been previously eligible under the law in effect before this rule took effect. However, 2019 Wisconsin Act 185 provides that certain benefit charges related to the public health emergency declared on March 12, 2020 will not be charged to employers.

***Agency contact person***

Questions related to this rule may be directed to:

Janell Knutson, Director, Bureau of Legal Affairs  
Division of Unemployment Insurance  
Department of Workforce Development  
P.O. Box 8942  
Madison, WI 53708  
Telephone: (608) 266-1639  
E-Mail: [Janell.Knutson@dwd.wisconsin.gov](mailto:Janell.Knutson@dwd.wisconsin.gov)

***Place where comments are to be submitted and deadline for submission***

Janell Knutson, Director, Bureau of Legal Affairs  
Division of Unemployment Insurance  
Department of Workforce Development  
P.O. Box 8942  
Madison, WI 53708  
E-Mail: DWDAdminRules@dwd.wisconsin.gov

Comments will be accepted until a date to be determined.

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1           **SECTION 1.** DWD 127.01 (2m) is created to read:

2           **DWD 127.01 (2m)** (a) In this subsection, "public health emergency" means any week or  
3 part thereof during a public health emergency declared by Executive Order # 72 on March 12,  
4 2020, under s. 323.10, Stats., and any extension in response to the SARS-CoV-2 virus, including  
5 by the department of health services under ch. 252, Stats., or during a federally declared  
6 emergency in response to the SARS-CoV-2 virus, or during a period in which the state has been  
7 federally declared to be a major disaster due to the SARS-CoV-2 virus.

8           (b) A public health emergency constitutes four work search actions for each weekly  
9 claim filed by a claimant during the public health emergency, unless federal law requires the  
10 claimant to actively seek work to qualify for federally funded benefits.

11           (c) The secretary of the department may waive compliance with par. (b) if the secretary  
12 determines that the waiver is necessary to permit continued certification of state law for grants to  
13 this state under Title III of the federal Social Security Act or for maximum credit allowances to  
14 employers under the federal Unemployment Tax Act or to maximize claimant's eligibility for  
15 100% federally funded benefits to protect the balance of the Wisconsin Unemployment  
16 Insurance Trust Fund.

17           **SECTION 2.** DWD 128.001 (2) (a) is renumbered DWD 128.001 (2) (ar).

18           **SECTION 3.** DWD 128.001 (2) (ag) is created to read:

1           **DWD 128.001 (2)** (ag) “COVID-19” means the SARS-CoV-2 virus and any related  
2 disease.

3           **SECTION 4.** DWD 128.01 (7) is created to read:

4           **DWD 128.01 (7)** COVID-19. (a) Notwithstanding any other subsection in this section, the  
5 department shall consider a claimant to be available for suitable work if the claimant is perceived  
6 by an employer as exhibiting COVID-19 symptoms preventing a return to work, or the claimant  
7 is quarantined by a medical professional due to COVID-19 symptoms, or the claimant is  
8 instructed to stay home under local, state or federal government direction or guidance due to  
9 COVID-19, and one of the following applies:

10           1. The employer has instructed the claimant to return to work after the employee no  
11 longer exhibits symptoms, after a set amount of time to see if the disease is present, or after the  
12 quarantine is over.

13           2. The employer has not provided clear instruction for the claimant to return to work.

14           3. The claimant would be available for other work with another employer but for the  
15 perceived COVID-19 symptoms preventing a return to work or but for the quarantine.

16           (b) This subsection shall be good cause for not reporting for an eligibility review under s.  
17 DWD 128.03.

18           **SECTION 5.** DWD 128.02 is created to read:

19           **DWD 128.02 Work Available.** For the purposes of s. 108.04 (1) (a) to (bm), Stats.,:

20           (1) An employee is not considered absent from work or to have missed work available if  
21 the employee is perceived by an employer as exhibiting COVID-19 symptoms preventing a  
22 return to work or the employee is quarantined by a medical professional or under local, state or  
23 federal government direction or guidance due to COVID-19.

1 (2) There is no work available for employees during a public health emergency, as  
2 defined in s. DWD 127.01 (2m) (a).

3 **SECTION 6.** DWD 128.025 is created to read:

4 **DWD 128.025 Waiver.** The secretary of the department may waive compliance with all  
5 or any part of s. DWD 128.01 (7) or 128.02 if the secretary determines that the waiver is  
6 necessary to permit continued certification of state law for grants to this state under Title III of  
7 the federal Social Security Act or for maximum credit allowances to employers under the federal  
8 Unemployment Tax Act or to maximize a claimant's eligibility for 100% federally funded  
9 benefits to protect the balance of the Wisconsin Unemployment Insurance Trust Fund.

10 **SECTION 7. EFFECTIVE DATE.** This rule shall take effect upon publication in the official  
11 state newspaper as provided in s. 227.24 (1) (c).

Dated this \_\_\_\_\_ day of May, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: \_\_\_\_\_  
Caleb Frostman, Secretary

**ORDER OF THE WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following emergency rule *to create* DWD 113.027, relating to waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19.

The Governor approved the scope statement for this rule, SS 038-20, on May 8, 2020. The scope statement was published in register No. 773A2, on May 11, 2020, and was approved by the Department on May 22, 2020. This rule was approved by the Governor on May 29, 2020.

**Analysis Prepared by the Department of Workforce Development**

*Finding of Emergency*

On March 12, 2020, by Executive Order 72, the Governor declared a public health emergency to protect the health and wellbeing of the state's residents and directed state agencies to assist as appropriate in the State's ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses have temporarily or permanently closed, resulting in significant business income reduction and layoffs.

Under 2019 Wisconsin Act 185, 50% of unemployment insurance benefit claims for initial claims related to the public health emergency declared on March 12, 2020 will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement financing. The remaining 50% will be reimbursed by the federal government under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The federal government interprets the CARES Act to require employers subject to reimbursement financing to first pay their reimbursements due to the state in full before the federal government will reimburse those amounts. *See* U.S. Department of Labor (US-DOL) Unemployment Insurance Program Letter (UIPL) 18-20 (April 27, 2020). But, the CARES Act provides that states have "flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest...." CARES Act s. 2103(a). US-DOL encourages states to "interpret or amend their state unemployment compensation laws in a manner that provides maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest." UIPL 18-20, p. 2.

Because of the pandemic-related economic devastation, employers subject to reimbursement financing may be unable to pay their reimbursements for unemployment claims in full. And, the requirement to immediately pay their reimbursements to receive the federal funding could further jeopardize the viability of employers subject to reimbursement financing.

### ***Statutes Interpreted***

Section 108.22 (1) (cm), Stats.

### ***Statutory Authority***

Sections 108.14 (2) and 108.22 (1) (cm), Stats.

### ***Explanation of Statutory Authority***

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under s. 108.14 (2), Stats.

Interest is assessed monthly on delinquent employer contributions and reimbursements in lieu of contributions. Section 108.22 (1) (a), Stats. The Department may promulgate rules to, in limited circumstances, “waive or decrease the interest charged.” Section 108.22 (1) (cm), Stats.

### ***Related Statutes or Rules***

Current s. DWD 113.025 permits the Department to waive or decrease interest in limited circumstances.

### ***Plain Language Analysis***

This rule specifies the limited circumstances under which employers subject to reimbursement financing, who are unable to timely pay their reimbursements due to the COVID-19 pandemic, may receive a waiver of interest on their reimbursements. Under this rule interest is waived starting on June 1, 2020.

### ***Summary of, and comparison with, existing or proposed federal statutes and regulations***

Federal law requires that state laws conform to and comply with federal requirements. 20 CFR 601.5.

The CARES Act provides that states have “flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest....” CARES Act s. 2103(a). US-DOL encourages states to “interpret or amend their state unemployment compensation laws in a manner that provides maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest.” UIPL 18-20, p. 2.

### ***Comparison with rules in adjacent states***

Michigan, Illinois, and Iowa do not appear to waive interest for employers subject to reimbursement financing. Minnesota law permits the compromise of reimbursements due by employers under Minnesota Statutes 2019, s. 268.067(b).

### ***Summary of factual data and analytical methodologies***

The Department reviewed Wisconsin statutes, administrative rules, the Governor's Emergency Orders, and recent changes to federal law to determine the options available to provide maximum flexibility to employers subject to reimbursement financing regarding assessment of interest.

### ***Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis***

Under 2019 Wisconsin Act 185, 50% of the unemployment insurance benefit claims related to the public health emergency declared on March 12, 2020 will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement financing; the remaining 50% will be reimbursed by the federal government under the federal CARES Act. The charging relief for employers under state and federal law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020.

The federal government interprets the CARES Act to require employers subject to reimbursement financing to first pay their reimbursements due to the state in full before the federal government will reimburse those amounts. Businesses may find it difficult to pay their reimbursements timely during the COVID-19 pandemic due to a reduction in business income. Under this rule, businesses subject to reimbursement financing will not be assessed interest for tardy reimbursements.

### ***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

### ***Effect on small business***

This rule may have a positive impact on small businesses, as defined in s. 227.114 (1), Stats., if a small business is subject to reimbursement financing. Those businesses would receive the benefit of a waiver of interest under this rule if they do not pay their reimbursements timely.

***Agency contact person***

Questions related to this rule may be directed to:

Janell Knutson, Director, Bureau of Legal Affairs  
Division of Unemployment Insurance  
Department of Workforce Development  
P.O. Box 8942  
Madison, WI 53708  
Telephone: (608) 266-1639  
E-Mail: [Janell.Knutson@dwd.wisconsin.gov](mailto:Janell.Knutson@dwd.wisconsin.gov)

***Place where comments are to be submitted and deadline for submission***

Mark Kunkel, Rules and Records Coordinator  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707  
**E-Mail:** [DWAdminRules@dwd.wisconsin.gov](mailto:DWAdminRules@dwd.wisconsin.gov)

Comments will be accepted until a date to be determined.

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1           **SECTION 1.** DWD 113.027 is created to read:

2           **DWD 113.027 Waiver of Interest for Employers Subject to Reimbursement**

3           **Financing.** The department shall waive interest assessed under s. 108.22 (1) (a), Stats., if all the  
4 following conditions are met:

5           **(1)** The employer for which the interest is waived is a reimbursable employer, as defined  
6 in s. 108.155 (1) (b), Stats.

7           **(2)** The employer owes reimbursements in lieu of contributions.

8           **(3)** The interest was assessed on or after June 1, 2020.

9           **SECTION 2. EFFECTIVE DATE.** This rule shall take effect on June 5, 2020 or upon  
10 publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats., whichever is  
11 later.

Dated this \_\_\_ day of \_\_\_\_\_, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: \_\_\_\_\_  
Caleb Frostman, Secretary

**ORDER OF THE WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following emergency rule *to amend* DWD 102.01 and *to create* DWD 102.04, relating to employer contribution rates for 2021.

The Governor approved the scope statement for this rule, SS 070-20, on June 5, 2020. The scope statement was published in register No. 774A2, on June 8, 2020. The notice of public hearing and comment period on the scope statement was published on June 15, 2020 in register No. 774A3. The public hearing on the scope statement was held on June 18, 2020. The scope statement was approved by the Department on June 19, 2020. This rule was approved by the Governor on June 23, 2020.

**Analysis Prepared by the Department of Workforce Development**

***Finding of Emergency***

By Executive Order 72, the Governor declared a public health emergency to protect the health and well-being of the state's residents and directed state agencies to assist as appropriate in the State's ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses have temporarily or permanently closed, resulting in significant business income reduction and layoffs.

Under 2019 Wisconsin Act 185, s. 50, which created s. 108.07 (5) (bm), Stats., the Department of Workforce Development is directed to charge unemployment benefits for initial claims that are related to the public health emergency declared by Executive Order 72, to the balancing account of the Trust Fund for contribution employers. This treatment of claims charging applies to weeks of benefits payable from the week of March 15, 2020 through December 26, 2020.

The Department's antiquated computer systems are ill-equipped to handle the changes in charges from the employers' accounts to the balancing account. Each weekly claim to be charged to the balancing account under new section 108.07 (5) (bm), Stats., requires Department personnel to manually change the benefit charges from the employer's account to the balancing account of the Trust Fund after any federal funds have been appropriately applied. The Department estimates that this manual process will take approximately 15 minutes for each weekly claim. Given the high volume of claims being filed during the pandemic, the Department expects that the thousands of hours of manual work to complete the charging changes will not be completed by June 30, 2020 — and likely will not be completed by the end of 2020.

Under s. 108.18 (4), Stats., "an employer's contribution rate on the employer's payroll for a given calendar year shall be based on the reserve percentage of the employer's account as of the applicable computation date," which is June 30 of each year, as specified in s. 108.02 (8), Stats.

Section 108.02 (22), Stats., requires the Department to determine the status of an employer's account when setting the reserve percentage for contribution purposes as of the computation date.

Because the Department will not be able to complete the manual charging changes required by 2019 Wisconsin Act 185 by June 30, 2020, most employers' contribution rates for 2021 will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2021 that are higher than they should be.

If this rule is not promulgated, the Department would be required to halt programming changes related to new federal unemployment benefit programs and reassign and train staff currently processing those claims to assist with the manual benefit recharging efforts to attempt to meet the June 30, 2020 deadline for calculating 2021 tax rates. This rule will protect claimants who need benefit payments and protect employers from unnecessarily high contribution rates. Higher contribution rates for employers and unpaid benefit claims could impede Wisconsin's economic recovery from the pandemic.

### ***Statutes Interpreted***

Sections 108.02 (8), 108.02 (22), 108.07 (5) (bm), and 108.18 (4), Stats., which are discussed in the above Finding of Emergency.

### ***Statutory Authority***

Section 108.14 (2), Stats.

### ***Explanation of Statutory Authority***

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under s. 108.14 (2), Stats.

### ***Related Statutes or Rules***

Sections 108.02 (8), 108.02 (22), 108.07 (5) (bm), and 108.18 (4), Stats.

### ***Plain Language Analysis***

This rule provides that the Department, in calculating an employer's net reserve as of the June 30, 2020 computation date, shall disregard all benefit charges and benefit adjustments for the period of March 15, 2020 through June 30, 2020.

The Department will, in effect, assume that all benefit charges and adjustments were related to the public health emergency declared by Executive Order 72. This assumption applies only for the purposes of setting the contribution rates for 2021. This rule will ensure that employers' contribution rates for 2021 are calculated based on reserve fund balances as of June 30, 2020 so that the policy goals of 2019 Wisconsin Act 185 are met. This rule will only affect calculation of

contribution rates for 2021. Contribution rates for 2022 will be calculated in 2021 after all recharging is complete.

***Summary of, and comparison with, existing or proposed federal statutes and regulations***

Federal law requires that state laws conform to and comply with federal requirements. 20 CFR 601.5.

Under the federal Families First Coronavirus Response Act, Public Law 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), a state may receive a share of \$500 million of federal funding for administering the state's unemployment insurance program if the "State has demonstrated steps it has taken or will take to ... non-charge[e] employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers." 42 USC 1103(h)(3)(B). Wisconsin's share of the \$500 million is about \$9.457 million.

***Comparison with rules in adjacent states***

Illinois does not charge employers for unemployment benefits "for a week of unemployment that begins on or after March 15, 2020, and before December 31, 2020, and is directly or indirectly attributable to COVID-19..." 820 ILCS 405/1502.4(A).

By Executive Order 2020-76, Michigan charges benefits to the unemployment insurance non-chargeable account, unless the employer was determined to have misclassified workers.

Iowa is currently not charging unemployment benefits related to COVID-19 to employer accounts.

By Emergency Executive Order 20-05, Minnesota will "not use unemployment benefits paid as a result of the COVID-19 pandemic in computing the future unemployment tax rate of a taxpaying employer."

***Summary of factual data and analytical methodologies***

The Department reviewed Wisconsin statutes, administrative rules, and recent changes to federal law to determine the options available to ensure that employer contribution rates are appropriately determined for 2021.

***Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis***

Currently, an employer's contribution rate on the employer's payroll for a given calendar year is based on the reserve percentage of the employer's account as of the applicable computation date, June 30 of each year. Ultimately, however, the employer's reserve fund balance takes into account all charges and credits on a rolling basis so that the employer's unemployment experience determines the contribution rate.

Under 2019 Wisconsin Act 185, s. 50, 100% of the unemployment insurance benefit claims related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020. However, charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government.

Because the Department will not be able to complete the manual charging changes required by 2019 Wisconsin Act 185 by June 30, 2020, most employers' contribution rates for 2021 will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2021 that are higher than they should be.

This rule, in effect, directs the Department to assume that all benefit charges and benefit adjustments with a transaction date of March 15, 2020 through June 30, 2020 relate to the public health emergency declared by Executive Order 72. This will have the effect of aligning employer contribution rates for 2021 with the policy goals of 2019 Wisconsin Act 185.

#### ***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

#### ***Effect on small business***

The proposed rule is expected to have a positive economic impact on employers subject to contribution financing, which may include small businesses, to provide those employers with contribution rates that align with the policy goals of 2019 Wisconsin Act 185.

#### ***Agency contact person***

Questions related to this rule may be directed to:

Janell Knutson, Director, Bureau of Legal Affairs  
Division of Unemployment Insurance  
Department of Workforce Development  
P.O. Box 8942  
Madison, WI 53708  
Telephone: (608) 266-1639  
E-Mail: [Janell.Knutson@dwd.wisconsin.gov](mailto:Janell.Knutson@dwd.wisconsin.gov)

***Place where comments are to be submitted and deadline for submission***

Mark Kunkel, Rules and Records Coordinator  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707  
E-Mail: DWDAdminRules@dwd.wisconsin.gov

Comments will be accepted until a date to be determined.

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1           **SECTION 1.** DWD 102.01 is amended to read:

2           **DWD 102.01 Purpose.** This chapter specifies the initial contribution rates for certain  
3 categories of employers. This chapter also interprets ch. 108, Stats., for determining employer  
4 contribution rates for 2021.

5           **SECTION 2.** DWD 102.04 is created to read:

6           **DWD 102.04 Employer Contribution Rates for 2021.** Solely for the purposes of ss.  
7 108.02 (8), 108.02 (22), and 108.18 (4), Stats., in calculating an employer's net reserve as of the  
8 June 30, 2020 computation date, the department shall disregard all benefit charges and benefit  
9 adjustments for the period of March 15, 2020 through June 30, 2020.

10           **SECTION 3. EFFECTIVE DATE.** This rule shall take effect on June 29, 2020.

Dated this 25th day of June, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: \_\_\_\_\_

Caleb Frostman, Secretary

**ORDER OF THE WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following emergency rule *to create* DWD 120.02, relating to providing notification of the availability of unemployment insurance to employees at the time of separation from employment.

The Governor approved the scope statement for this rule, SS 018-20, on March 30, 2020. The scope statement was published in register no. 772A1 on April 6, 2020. The notice of preliminary hearing on the scope statement was published in register no. 772A3 on April 20, 2020. The Department held a preliminary hearing on the scope statement on April 23, 2020. The deadline to comment on the scope statement was April 24, 2020. The Department approved the scope statement on April 28, 2020. This rule was approved by the Governor on \_\_\_\_\_, 2020.

**Analysis Prepared by the Department of Workforce Development**

***Finding of Emergency***

On March 12, 2020, by Executive Order 72, the Governor declared a public health emergency to protect the health and well-being of the state’s residents and directed state agencies to assist as appropriate in the State’s ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses temporarily or permanently closed, resulting in significant business income reduction and layoffs.

On March 18, 2020, the federal Families First Coronavirus Response Act became law. Division D of the Families First Coronavirus Response Act is the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (“EUISAA”). EUISAA provides \$1 billion in emergency grants to states to administer unemployment insurance programs. A state must take required actions to be eligible to receive the EUISAA grants. One EUISAA grant requirement is that the “State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.” 42 USC 1103 (h) (2) (A).

An emergency rule is necessary to implement EUISAA and corresponding U.S. Department of Labor guidance (Unemployment Insurance Program Letter No. 13-20, dated March 22, 2020, and Unemployment Insurance Program Letter No. 13-20, change 1, dated May 4, 2020) to ensure that claimants have timely notification of the availability of unemployment insurance.

***Statutes Interpreted***

Section 108.04 (2) (c), Stats.

### ***Statutory Authority***

Sections 108.04 (2) (c) and 108.14 (2), Stats.

### ***Explanation of Statutory Authority***

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under s. 108.14 (2), Stats.

The Department may promulgate rules to require an “employer [to] inform his or her employees of the requirements of [the general qualifying requirements for unemployment insurance] in such reasonable manner.” Section 108.04 (2) (c), Stats.

### ***Related Statutes or Rules***

Current s. DWD 120.01 requires employers to “keep employees informed about unemployment insurance under ch. 108, Stats., by posting appropriate notice-posters supplied by the unemployment insurance division.” Posters must be posted “on bulletin boards, near time clocks, and other places where all employees will readily see them.”

### ***Plain Language Analysis***

This rule specifies how employers must provide notification of the availability of unemployment insurance to employees at the time of separation from employment. An employer’s failure to do so could result in an employee having additional time to file an initial claim for benefits. This is consistent with current law, which provides employees with additional time to file an initial claim if the employer fails to post required notices about unemployment insurance in the workplace.

### ***Summary of, and comparison with, existing or proposed federal statutes and regulations***

Federal law requires that state laws conform to and comply with federal requirements. 20 CFR 601.5.

EUISAA provides, as a requirement for additional federal funding for state unemployment insurance programs, that the “State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.” 42 USC 1103 (h) (2) (A).

### ***Summary of comments on the statement of scope and description of how the comments were taken into account in drafting the rule***

At the public hearing on the scope statement, the Department received one comment on the rule, which was: Does the Department envision that an employer would have to provide notice in all

terminations including reductions, terminations and furloughs? The Department responded that it has not yet drafted the emergency rule; this is a public hearing on the scope of the rule. However, the U.S. Department of Labor has indicated that employers must notify individual employees of the availability of unemployment insurance at the time of separation from employment. The Department drafted this rule to require an employer to provide notice of the availability of unemployment insurance at the time of all separations, which is consistent with EUISAA.

The Department also received one written comment on the scope statement. The written comment indicated concern that the scope statement “does not delineate what, if any, penalties would apply if an employer is found to be in noncompliance” with this rule. The Department did not create a penalty for noncompliance with the new rule. However, if an employer does not comply with the new rule, an employee may be able to backdate their unemployment insurance benefit claim. But the employee would not be able to backdate their unemployment insurance benefit claim on this basis if the employee was aware of the availability of unemployment insurance.

The written comment also asked the Department, to the extent consistent with federal law, to exempt employers from the requirements of this rule for employees who separate for misconduct or “other benefit disqualifying actions.” The Department interprets EUISAA to require employers to provide notice of the availability of unemployment insurance to all employees at separation, regardless of the reasons for or circumstances surrounding the termination. This is because the relevant provision in EUISAA does not contain an exception for separations due to misconduct or other reasons that would make the employee ineligible. The notice provided by the employer is not a notice that the employee is eligible for benefits, only that they may apply.

### *Comparison with rules in adjacent states*

Minnesota (Emergency Executive Order 20-29), Michigan (Mich. Admin. Code R 421.204), and Illinois (56 Ill. Adm. Code 2720.100(a)) each require employers to give employees notice of the availability of unemployment insurance at the time of separation from employment. Iowa does not currently have this requirement in law.

### *Summary of factual data and analytical methodologies*

The Department reviewed Wisconsin statutes, administrative rules, the Governor’s Emergency Orders, recent changes to federal law, and recent federal guidance to determine what methods employers must use to give notice to their employees of the availability of unemployment insurance at the time of separation.

*Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis*

EUISAA provides, as a requirement for additional federal funding for state unemployment insurance programs, that the “State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.” 42 USC 1103 (h) (2) (A).

Under current law, employers must keep employees informed about unemployment insurance by posting appropriate notice-posters supplied by the unemployment insurance division. An employer’s failure to do so may result in additional time for employees to file initial claims for unemployment insurance benefits.

Consistent with the new federal law, this rule adds a requirement that employers must also notify employees of the availability of unemployment insurance at the time of separation. Employers who fail to provide this notice may have additional benefits charged to their unemployment insurance account in the Trust Fund if the employee is given additional time to file an initial claim due to the employer’s failure to give notice. Additional time to file an initial claim is only given to claimants who were unaware of the requirement to file for unemployment insurance benefits, so it is expected that the fiscal effect on employer unemployment insurance accounts will be minimal.

Employers may incur an additional expense in providing notice under this rule if they elect to provide notice in paper form by, for example, mailing a letter to the employee. However, employers may provide electronic notice, such as e-mail or text message, to employees. Electronic notice is not expected to create new out-of-pocket costs for employers.

*Fiscal Estimate and Economic Impact Analysis*

The Fiscal Estimate and Economic Impact Analysis is attached.

*Effect on small business*

This rule may affect small businesses, as defined in s. 227.114 (1), Stats., if a small business has employees who separate from employment. Those employers would be required, under this rule, to provide notice to the employees of the availability of unemployment insurance to the employees at the time the employees separate from employment.

*Agency contact person*

Questions related to this rule may be directed to:

Janell Knutson, Director, Bureau of Legal Affairs  
Division of Unemployment Insurance  
Department of Workforce Development  
P.O. Box 8942  
Madison, WI 53708  
Telephone: (608) 266-1639  
E-Mail: [Janell.Knutson@dwd.wisconsin.gov](mailto:Janell.Knutson@dwd.wisconsin.gov)

*Place where comments are to be submitted and deadline for submission*

Mark Kunkel, Rules and Records Coordinator  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707  
E-Mail: [DWDAdminRules@dwd.wisconsin.gov](mailto:DWDAdminRules@dwd.wisconsin.gov)

Comments will be accepted until a date to be determined.

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1           **SECTION 1.** DWD 120.02 is created to read:

2           **DWD 120.02 Notice at Separation.**

3           **(1)** Each employer shall provide notification of the availability of unemployment  
4 insurance to employees at the time of separation from employment by at least one of the  
5 following methods:

6                   **(a)** Letter.

7                   **(b)** E-mail.

8                   **(c)** Text message.

9                   **(d)** Flyer.

10                   **(e)** Any other department-approved method designed to give immediate notice to  
11 employees of the availability of unemployment insurance at the time of separation.

1           (2) If the circumstances of the separation make immediate notice under this section  
2 impossible, the employer shall provide notice to the employee as soon as possible.

3           (3) Notice under this section shall include content approved by the department.

4           **Note:** Approved content for the notice under this section is available online at  
5 <https://dwd.wisconsin.gov/dwd/publications/ui/notice.htm>.

6           (4) An employer’s failure to comply with this section constitutes exceptional  
7 circumstances over which the claimant has no control under s. DWD 129.01 (4) (f) unless the  
8 employee was aware of the availability of unemployment insurance.

9           **SECTION 2. EFFECTIVE DATE.** This rule shall take effect on November 2, 2020.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: \_\_\_\_\_  
Caleb Frostman, Secretary

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date July __, 2020</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter DWD 120 - Notices as to Benefits</p>	
<p>4. Subject Providing notification of the availability of unemployment insurance to employees at the time of separation from employment</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR   <input checked="" type="checkbox"/> FED   <input type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected Wis. Stat. § 20.445(1)(n)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy   <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b></p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). <b>\$Indeterminate</b></p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule This emergency rule requires employers to give employees notice of the availability of unemployment insurance at the time of separation from employment. This rule is expected to make it more likely that employees will file timely applications for unemployment insurance and that fewer employees will seek to backdate their claims.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The Department consulted with the Unemployment Insurance Advisory Council, which comprises representatives from a variety of business and labor organizations.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The proposed rule is expected to have an economic impact on employees, who may be more likely to file timely claims for unemployment insurance. The proposed rule is expected to have an economic impact on employers because employers will need to provide notice of the availability of unemployment insurance at the time of separation of employment. However, employers may provide notice to employees electronically, so employers may be able to limit the fiscal impact of this rule to minimal staff time to send an e-mail or text message to the separating employee.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing this rule are that claimants who are separated from employment will have timely notice of the availability of unemployment insurance, so that they will be less likely to attempt to backdate their claim. The department may save staff time under this rule if more unemployment insurance claims are timely filed and fewer claimants seek to backdate claims.</p>	

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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16. Long Range Implications of Implementing the Rule

The long range implications of this rule are that more employees will have timely notice of the availability of unemployment insurance benefits so they will be more likely to file their claims timely and less likely to seek to backdate their claims.

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17. Compare With Approaches Being Used by Federal Government

The Emergency Unemployment Insurance Stabilization and Access Act of 2020 provides, as a requirement for additional federal funding for state unemployment insurance programs, that the “State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.” 42 USC 1103 (h) (2) (A).

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota (Emergency Executive Order 20-29), Michigan (Mich. Admin. Code R 421.204), and Illinois (56 Ill. Adm. Code 2720.100(a)) each require employers to give employees notice of the availability of unemployment insurance at the time of separation from employment. Iowa does not currently appear to have this requirement in law.

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19. Contact Name

Janell Knutson

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20. Contact Phone Number

608-266-1639

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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This rule may affect small businesses, as defined in s. 227.114 (1), Stats., if a small business has employees who separate from employment. Those employers would be required, under this rule, to provide notice to the employees of the availability of unemployment insurance to the employees at the time the employees separate from employment.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The Emergency Unemployment Insurance Stabilization and Access Act of 2020 provides, as a requirement for additional federal funding for state unemployment insurance programs, that the "State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor." 42 USC 1103 (h) (2) (A).

Under current law, employers must keep employees informed about unemployment insurance by posting appropriate notice-posters supplied by the unemployment insurance division. An employer's failure to do so may result in additional time for employees to file initial claims for unemployment insurance benefits.

Consistent with the new federal law, this rule adds a requirement that employers must also notify employees of the availability of unemployment insurance at the time of separation. Employers who fail to provide this notice may have additional benefits charged to their unemployment insurance account in the Trust Fund if the employee is given additional time to file an initial claim due to the employer's failure to give notice. Additional time to file an initial claim is only given to claimants who were unaware of the requirement to file for unemployment insurance benefits, so it is expected that the fiscal effect on employer unemployment insurance accounts will be minimal.

Employers may incur an additional expense in providing notice under this rule if they elect to provide notice in paper form by, for example, mailing a letter to the employee. However, employers may provide electronic notice, such as e-mail or text message, to employees. Electronic notice is not expected to create new out-of-pocket costs for employers.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

Delayed effective date to ensure that businesses have time to implement the new rule.

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The department will provide employers with forms that employers may use to comply with the new rule.

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5. Describe the Rule's Enforcement Provisions

The Department of Workforce Development administers the unemployment insurance program by requiring claimants to provide information on unemployment insurance benefit claims.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
-