



## Unemployment Insurance Advisory Council

### Meeting

October 15, 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): 145 457 0793 Meeting Password: DWD1

### Agenda

1. Call to Order and Introductions
2. Approval of Minutes of the August 20, 2020 Council Meeting
3. Department Update
  - [Lost Wage Assistance Program](#)
4. Trust Fund Update – Tom McHugh
5. 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 – December 4, 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 – December 31, 2020

- [Emergency Rule 2018](#), DWD Ch. 102
  - Employer contribution rates for 2021.
  - Effective June 29, 2020 – November 25, 2020
  - Request for 60-day extension filed with JCRAR
- [Emergency Rule 2034](#), DWD Ch. 120
  - Providing notification of the availability of unemployment insurance to employees at the time of separation from employment.
  - Effective November 2, 2020 – March 31, 2021
  - [WebEx hearing](#) will be held November 10, 2020 at 10:00 a.m.
- Scope Statement
- 6. Research Requests
- 7. Future Meeting Dates
  - November 19, 2020
  - No December 2020 meeting
- 8. [Public Hearing \(by WebEx\)](#)
  - Monday, November 9, 2020, 2:00 p.m. - 4:00 p.m.
  - Tuesday, November 10, 2020, 4:30 p.m. - 6:30 p.m.
- 9. 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

August 20, 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, Mike Gotzler, John Mielke, Susan Quam, Sally Feistel, Shane Griesbach, Terry Hayden, Di Ann Fechter and Dennis Delie.

**Department Staff:** Mark Reihl, Andrew Rubsam, Jim Moe, Mike Myszewski, Pamela McGillivray (Chief Legal Counsel), Jennifer Wakerhauser (Legal Counsel), Tom McHugh, Mary Jan Rosenak, Pam James, Emily Savard, Janet Sausen, Robert Usarek, Patrick Lonergan, Joe Brockman, and Robin Gallagher.

**Members of the Public:** BJ Dernbach (office of Representative Warren Petryk), Tyler Longsine (office of Representative James Edming), Chris Reader (Wisconsin Manufacturers & Commerce), Victor Forberger (Attorney, Wisconsin UI Clinic), Margit Kelley (Wisconsin Legislative Council), Mike Duchek (Legislative Reference Bureau), Ryan Horton (Legislative Fiscal Bureau), Linda Palmer (office of Representative. Schraa) Ronald Kramer, and Elizabeth Wheeler (Legislative Reference Bureau).

### 1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:04 a.m. under the Wisconsin Open Meetings Law. Attendance was taken by roll call and Ms. Knutson acknowledged the department staff in attendance.

### 2. Approval of Minutes

Motion by Mr. Hayden, second by Mr. Mielke, to approve the minutes of the July 16, 2020 meeting without correction. The vote was taken by roll call and passed unanimously.

### 3. Department Update

Mr. Reihl reported there have been no significant changes to staffing since the July meeting. UI employs 1,900 people, including vendors. This compares to 500 employees in March 2020.

The call centers are open Monday through Friday from 6:15 a.m. to 5:30 p.m., and Saturday from 7:00 a.m. to 1:30 p.m. The number of calls has decreased significantly. As of last

Tuesday, there was no wait time for callers. The PUA hotline had a wait time of one minute and eight seconds.

The FPUC program that provided the additional \$600.00 per week federal benefit ended the week of July 25<sup>th</sup>. Claimants who are eligible for any weeks of benefits under the FPUC program will be paid for those benefits. Extended Benefits are being programmed and will be completed in early October. Because of programming delays, claimants will be able to file for past weeks of Extended Benefits and receive benefits due.

The Department has received over 98,000 PUA applications and has processed over 67,500 of those applications. The Department has been receiving about 2,500 new applications per week.

Between March 15 and August 20, 2020, the Department paid \$3.5 billion in benefits, of which \$2.3 billion was paid in FPUC benefits.

As of August 17<sup>th</sup>, there are 534 active Work-Share plans, with 17,754 active participants.

UI systems are under attack across the country. Sources from outside the Department are attacking the system by filing fraudulent claims using stolen personally identifying information from massive external data breaches. Wisconsin has been more successful than other states in stopping fraudulent claims.

Since March 15, 2020, 853,000 initial claims were filed. In all of 2019, 290,000 initial claims were filed. There were two weeks in March when more than 100,000 initial claims were filed. Beginning in June, the number of initial claims filed has decreased to between 20,000 and 30,000 per week. Initial claims fell to under 15,000 in each of the last two weeks. Approximately 5.7 million weekly claims have been filed since March 15<sup>th</sup>, as compared with 1.5 million claims filed in all of 2019. There were 172,000 weekly claims filed last week. Of the 5.7 million weekly claims filed, approximately 5 million, or 88%, have been resolved.

Mr. Manley asked about the trend of continuing claims.

Mr. Reihl stated that weekly claims have decreased as follows:

Week 31: 305,000 claims filed  
Week 32: 261,000 claims filed  
Week 33: 248,000 claims filed  
Week 34 (current week) 202,853 claims filed

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

Mr. McHugh stated that the year-to-date benefit payments from the trust fund have been slightly over \$1.0 billion. Including federal programs, approximately \$3.5 billion has been paid.

There have been 508,245 claimants so far in 2020, as compared to 130,000 claimants in 2019.

FPUC payments totaled \$2.3 billion; PUA payments totaled \$83.7 million; and PEUC payments totaled \$27.9 million.

Tax receipts are down \$40 million, or 8.6%, from last year. In 2020, \$427.8 million in UI taxes have been collected, as compared to \$467.8 million in 2019. Taxable payroll is \$1.0 billion less than last year.

The trust fund balance on August 18<sup>th</sup> was \$1.37 billion. Interest on the trust fund so far in 2020 is \$22.4 million, as compared to \$21.0 million in 2019.

Mr. Gotzler asked what the trust fund balance was in 2019.

Mr. McHugh stated that the trust fund balance was slightly under \$2.0 billion on December 31, 2019.

## **5. Program Integrity Assessment**

Ms. Knutson referred Council members to Secretary Frostman's letter regarding the Program Integrity Assessment. In his letter, Secretary Frostman recommended that the Department invest the .01% of payroll into the Program Integrity Fund.

Mr. Hayden stated that the Council cannot turn its back on Program Integrity and that the investment pays for itself.

Mr. Hayden moved that the Program Integrity Assessment be approved.

Mr. Manley seconded the motion.

A vote was taken by roll call. The motion carried unanimously.

## **6. Federal Update**

Mr. Rubsam stated that the President has signed the Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 into law. This law will require the federal government to reimburse states for the 50% share of reimbursable charges without reimbursable employers first having to pay those charges.

Mr. Rubsam then discussed the federal Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2020. This memorandum directs FEMA and the USDOL to create a program to succeed the FPUC program.

The House of Representatives passed the Heroes Act, which would extend the FPUC program until the end of 2020. The Senate has taken no action on the House bill.

This memorandum will give the states the option of paying \$300.00 or \$400.00 per week in UI benefits in addition to the regular state UI payment. The federal government will provide

\$300.00 per week in FEMA funds and the states must pay \$100.00 per week for the \$400.00 benefit. The federal government has also indicated that states can use CARES Act funds or deem \$100.00 a week from state UI funds to count as the state share. Most states will deem the extra \$100.00 benefit from state UI funds. This benefit will be paid through the end of the year or until federal funds are exhausted.

South Dakota is not participating in this program. Eleven states have applied to participate in this program. Wisconsin has yet not decided whether to participate.

If FPUC is extended in some form, this program will terminate.

A claimant would be eligible for this program if their state or federal UI weekly benefit rate is \$100.00 or more per week. A claimant would not receive the additional \$300.00 benefit if their state or federal UI weekly benefit rate is less than \$100.00.

Ms. Knutson stated that, if the claim is not related to disruption caused by COVID-19, the claimant would not qualify for the additional \$300.00 federal benefit.

Mr. Gotzler asked about the timeline for Wisconsin to decide to apply for this program.

Mr. Reihl stated that the deadline to apply is September 10, 2020.

Mr. Gotzler asked when a decision will be made.

Mr. Reihl stated that a decision will be made before the application deadline.

Mr. Gotzler asked, if the state decides to participate, how long will it take to operationalize the program?

Mr. Reihl stated that programming will be the biggest piece of the project. UI will have to exclude those claimants who have less than a \$100.00 benefit and program in a certification that the reason is Covid-19 related.

Mr. Gotzler asked whether any of the 11 states that applied for this program have indicated how long it will take to operationalize the program.

Mr. Rubsam stated that the department is not aware of how long it is taking other states to operationalize the program.

Mr. Reihl stated that UI receives 3.75% reimbursement from the federal government for administering the UI program.

Ms. Knutson stated all costs related to this program will have to be tracked separately and cannot be charged to the Wisconsin's USDOL UI grant.

Mr. Delie asked how the Council moves forward in view of the September deadline.

Ms. Knutson stated that the Department will keep the Council informed of the Governor's decision.

## **7. Secretary's Letter to the Council Regarding Request for Extension of Emergency Rules**

Ms. Knutson stated that Secretary Frostman requested that she present his letter requesting the Council's support of the request for an extension of the emergency rules. Ms. Knutson then read Secretary Frostman's letter.

## **8. Rulemaking Update**

### Emergency Rule 2006, DWD Chapters 127 and 128

This emergency 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.

This emergency rule is effective May 9, 2020 through October 5, 2020.

Mr. Rubsam stated that if this emergency rule is not extended for 60 days, work searches will be required as of October 11, 2020. The work search requirement will also include claimants receiving Pandemic Unemployment Assistance, some of whom are business owners.

### Emergency Rule 2011, DWD Chapter 113

This emergency rule waives interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19.

This emergency rule is effective June 5, 2020 through November 1, 2020.

Mr. Rubsam stated that the Department recommends that this emergency rule be extended 60 days due to the administrative difficulty the Department will experience in recharging and reprogramming for all those claims. It will be difficult to accomplish the programming changes before sometime in 2021.

### Emergency Rule 2018, DWD Chapter 102

This emergency rule sets employer contribution rates for 2021. A public hearing was held on July 22, 2020. There were no comments.

This emergency rule is effective June 29, 2020 through November 25, 2020.

Mr. Rubsam stated that the Department is requesting a 60-day extension of this emergency rule. The Department will re-rate accounts beginning in October of 2020 and in some cases the re-rating will continue until March of 2021. Because of the extra work imposed by recharging and re-rating due to the COVID-19 Public Health Emergency, the Department will not be able to complete recharging under Act 185 until sometime in 2021.

Mr. Rubsam stated that the Department has created a form for employers to submit to inform the Department that the initial claim is related to the Public Health Emergency. The Department is not requiring employers to submit the form for initial claims submitted between March 15<sup>th</sup> and May 16<sup>th</sup>. For initial claims submitted after that time, employers may still submit an initial claim if the employer can demonstrate that the initial claim was due to the Public Health Emergency.

Mr. Rubsam clarified that if an employer can demonstrate that the initial claim is related to the Public Health Emergency, the employer can file the claim and be recharged if warranted.

Mr. Hayden stated that it is the consensus of the labor members of the Council to extend the emergency rules.

Ms. Knutson asked if the management members of the Council wish to caucus now or wait in order finish the agenda.

Mr. Manley stated that he does not have a concern with Secretary Frostman asking for an extension of the emergency rules, but he cannot speak for the other management members of the Council.

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

This rule provides notification of the availability of unemployment insurance to employees at the time of separation from employment.

Mr. Rubsam stated there is currently a requirement for the employer to post a notice regarding the availability of Unemployment Insurance. Under the current law, if the employer does not post a notice about the availability of UI insurance and the employee does not know about the availability of UI insurance, the employee may be able to back date a claim.

Mr. Rubsam stated that it is relatively rare for an applicant to backdate a claim because the applicant did not know the applicant could file for benefits. Mr. Rubsam stated that, during 2019, only about 480 claimants could backdate their claims.

Mr. Rubsam stated most employers provide notice of availability of UI benefits. If the employer does not provide notice, it may provide a reason to backdate a claim. If the employee knew about the availability of UI insurance, the employee cannot backdate a claim. If the employee had previously filed a claim, the employee has knowledge about the availability of UI insurance and would not eligible to backdate a claim.

Mr. Rubsam stated that he has been informed by the Bureau of Benefits that a claimant who successfully backdates a claim receives, on average, two additional weeks of benefits.

Mr. Rubsam stated the rule would go into effect on November 2, 2020. The two-month period will give employers time to prepare. Employers can notify employees by email, letter, text message or flyer. The Department has model language for employers on the web site.

Mr. Manley stated he has a concern over the manner in which the rule was proposed. Mr. Manley stated the federal law ties the requirement to notify the employee to provisions of the CARES Act. Mr. Manley would like to see a sunset provision in the rule.

Ms. Knutson stated that it is the Department's understanding that it is a federal requirement that the new rule be a permanent change in the law for a state to qualify for the grant money.

Mr. Manley stated that the rule will create a new burden on employers. Mr. Manley stated that this rule is not something management can support.

Ms. Knutson stated that the Department has already received the grant money. One of the grant requirements was that the Department create a requirement that employers notify each employee separately of the availability of unemployment insurance.

Mr. Manley stated he is talking about putting a time limit on the requirement for the employer inform the employee of the availability of unemployment insurance. Mr. Manley stated that he sees nothing in the CARES Act that requires the Department to make this a permanent rule.

Ms. Knutson stated that the Department is bound by US DOL interpretation of the rule. Ms. Knutson stated that legal staff will go back and look at the US DOL interpretation of the rule.

Mr. Manley voiced his concern that making this a permanent rule will create an obligation by employers to inform employees in perpetuity.

Ms. Knutson stated that the Department could promulgate the emergency rule and ask for two extensions. The emergency rule would be in effect for 270 days.

Mr. Gotzler stated that he shares Mr. Manley's concerns that rule will be permanent. Mr. Gotzler also wants to hear from the US DOL about all possible methods by which an employee can be notified about the availability of unemployment insurance.

Mr. Rubsam stated that US DOL requires that the notification be given individually at the time of separation. The examples in the rule are based on US DOL guidance. There may be other methods.

Ms. Knutson then read US DOL guidance on the rule to the Council.

Further discussion ensued between Council members and staff concerning the rule's requirement that employers individually notify employees at the time of separation about the availability of unemployment insurance.

Ms. Knutson stated that, the Council can consider suggested changes to the language of the proposed rule in caucus.

## **9. Public Hearing Schedule**

Ms. Knutson stated that the public hearing takes place in the fall of even numbered years. Testimony is taken at several locations throughout the state. There is also an email box. Due to the pandemic, the Department cannot use a webcast because the remote locations are not allowing the Department to use their facilities.

The Department is considering holding the public hearing using WebEx. The Council can pick a date and a couple of different times during that day for testimony. The Council could also choose to hold the hearing on more than one day.

Mr. Manley suggested using WebEx and recording it so that any Council member who is not able to attend would have access to what transpired.

Mr. Hayden stated that he favors whatever is most accessible to the public. Mr. Hayden suggested a couple of shorter sessions over two days.

Ms. Knutson stated that she would look at dates for the public hearing and let members know at the next Council meeting.

Mr. Hayden suggested staying away from deer hunting week.

## **10. Future Meeting Dates**

Ms. Knutson stated that the next regular meeting day is September 17, 2020. The October meeting date is October 15, 2020.

Mr. Griesbach stated that he likes meeting the third Thursday of the month. Mr. Griesbach stated that the monthly update is beneficial to both himself and his organization.

Ms. Knutson stated that staff will poll the Council members regarding their availability.

Ms. Feistel stated that she will not be available on September 17, 2020.

## **11. Caucus**

Ms. Knutson stated that Council action is needed on the extensions to the three emergency rules as well a recommendation as to any language changes and approval of Emergency Rule 120.

Ms. Knutson asked the Council members if they wished to discuss these rules or other business.

Mr. Gotzler moved that the Council meet in closed caucus under Wis. Stat. § 19,85 (1)(ee), to consider the emergency rules and any other agenda items. Mr. Hayden seconded the motion. The motion carried unanimously

The Council convened in closed caucus session at 12:01 p.m.

The Council reconvened in open session at 1:05 p.m. A quorum was present.

Mr. Manley reported that management supports the Secretary's letter to the JCRAR requesting to extend the three emergency rules.

Mr. Hayden stated that labor supports the Secretary's letter.

Mr. Hayden made a motion to support the Secretary's letter. The motion was seconded by Mr. Manley.

The vote was taken by roll call, and the motion passed unanimously.

A change in language to Emergency Rule 120 was discussed in caucus.

Mr. Rubsam stated that at the end of Sub Section 4 on page six the following language is added:

"If the employer meets the requirements of Section DWD 120.01 the employee is deemed to be aware of the availability of unemployment insurance for the purposes of this subsection."

Mr. Rubsam stated that this sentence means that, if the employer fails to meet the individual notice requirement but puts a poster in the workplace, the claimant will not be able to backdate a claim under the proposed rule.

Mr. Manley stated that management is comfortable with that language.

Mr. Hayden stated that labor was comfortable with the language. Mr. Hayden requested that the Department seek guidance from the US DOL as to whether the rule needs to be permanent.

Ms. Knutson stated that it's the Department's position that it will go forward and promulgate an emergency rule at this time.

Mr. Manley moved to approve the emergency rule with the amended language.

The motion was seconded by Mr. Hayden.

The vote was taken by roll call and the motion passed unanimously.

Ms. Knutson stated that the Department will promulgate the emergency rule and request two 60-day extensions, for a total of effective period of 270 days. The emergency rule will expire in July of 2021. The Department will research whether the US DOL requires a permanent rule.

## **12. Adjourn.**

The meeting adjourned at 1:19 p.m.

# UI Reserve Fund Highlights

October 15, 2020

1. Regular UI benefit payments through October 10 total \$1.2 billion, an increase of \$926.3 million or 305.1% when compared to benefits paid through the same week in 2019.

<b>Benefits Paid</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 Regular UI Paid**	\$1,229.9	\$303.6	\$926.3	305.1%

\*\*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 \$4 billion in a combination of federal and state programs since the beginning of the year.

There have been 546,875 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:

<b>Program</b>	<b>Benefits Paid</b>
Federal Pandemic Unemployment Compensation (FPUC)	\$2.5 billion
Pandemic Unemployment Assistance (PUA)	\$137.1 million
Pandemic Emergency Unemployment Compensation (PEUC)	\$63.3 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.

2. Tax receipts through October 10, declined by \$41.1 million or 8.7% 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.

<b>Tax Receipts</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 Tax Receipts	\$432.3	\$473.4	(\$41.1)	(8.7%)

\*All calendar year-to-date (YTD) numbers are through October 10, 2020 and a comparable 2019 period. The Financial statements for September are not yet final as of this meeting date.

3. The trust fund cash balance on October 1 was \$1.26 billion.

Interest earned on the Trust Fund is received quarterly. Interest for the first three quarters of 2020 was \$30.7 million compared to \$32.8 million for the same period last year. The U.S. Treasury annualized interest rate for this quarter is 2.3%.

<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	\$30.7	\$32.8	(\$2.1)	(6.4%)

*\*All calendar year-to-date (YTD) numbers are through October 10, 2020 and a comparable 2019 period. The Financial statements for September are not yet final as of this meeting date.*

# FINANCIAL STATEMENTS

For the Month Ended August 31, 2020



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
BALANCE SHEET  
FOR THE MONTH ENDED August 31, 2020

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
<b>CASH:</b>		
U.I. CONTRIBUTION ACCOUNT	1,577,351.00	1,173,852.62
U.I. BENEFIT ACCOUNTS	(15,702,577.18)	40,661.51
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,401,457,439.93</u>	<u>1,961,630,347.64</u>
TOTAL CASH	1,387,332,213.75	1,962,844,861.77
<b>ACCOUNTS RECEIVABLE:</b>		
BENEFIT OVERPAYMENT RECEIVABLES	76,611,801.92	70,825,141.36
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(30,473,543.60)</u>	<u>(33,299,180.83)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	46,138,258.32	37,525,960.53
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	31,088,890.93	28,609,252.15
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(16,201,015.81)</u>	<u>(15,782,719.70)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	14,887,875.12	12,826,532.45
OTHER EMPLOYER RECEIVABLES	65,678,514.16	22,477,625.83
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(9,295,572.07)</u>	<u>(7,998,911.47)</u>
NET OTHER EMPLOYER RECEIVABLES	56,382,942.09	14,478,714.36
TOTAL ACCOUNTS RECEIVABLE	<u>117,409,075.53</u>	<u>64,831,207.34</u>
TOTAL ASSETS	<u><u>1,504,741,289.28</u></u>	<u><u>2,027,676,069.11</u></u>
<b><u>LIABILITIES AND EQUITY</u></b>		
<b>LIABILITIES:</b>		
CONTINGENT LIABILITIES (7)	37,723,237.11	27,797,673.80
OTHER LIABILITIES	15,139,004.31	13,376,400.33
FEDERAL BENEFIT PROGRAMS	(8,200,570.41)	178,279.22
CHILD SUPPORT HOLDING ACCOUNT	280,072.00	6,473.00
FEDERAL WITHHOLDING TAXES DUE	2,052,075.74	69,488.00
STATE WITHHOLDING TAXES DUE	35,335,279.46	1,107,417.65
DUE TO OTHER GOVERNMENTS (8)	<u>507,337.64</u>	<u>513,424.38</u>
TOTAL LIABILITIES	82,836,435.85	43,049,156.38
<b>EQUITY:</b>		
RESERVE FUND BALANCE	1,834,495,072.73	2,442,361,340.79
BALANCING ACCOUNT	<u>(412,590,219.30)</u>	<u>(457,734,428.06)</u>
TOTAL EQUITY	<u>1,421,904,853.43</u>	<u>1,984,626,912.73</u>
TOTAL LIABILITIES AND EQUITY	<u><u>1,504,741,289.28</u></u>	<u><u>2,027,676,069.11</u></u>

1. \$20,806,685 of this balance is for administration purposes and is not available to pay benefits.
2. \$2,128,551 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. \$38,513,400 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 \$1,262,430. Deferrals for the prior year were \$662,704.
6. \$12,217,603, or 39.3%, of this balance is estimated.
7. \$23,777,013 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$13,946,224 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 \$2,886. The 08/31/2020 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$25,771. 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 August 31, 2020

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,390,152,725.06	2,909,863,506.12	2,794,896,813.36
BALANCING ACCOUNT	<u>(852,077,257.59)</u>	<u>(916,159,078.07)</u>	<u>(1,030,187,761.19)</u>
TOTAL BALANCE	1,538,075,467.47	1,993,704,428.05	1,764,709,052.17
<b>INCREASES:</b>			
TAX RECEIPTS/RFB PAID	1,863,282.45	306,337,114.30	338,259,814.40
ACCRUED REVENUES	2,832,390.00	3,765,865.69	(626,932.78)
SOLVENCY PAID	497,459.48	122,970,590.64	131,472,684.93
FORFEITURES	8,351.00	92,257.72	26,989.00
BENEFIT CONCEALMENT INCOME	19,558.58	406,289.81	491,028.02
INTEREST EARNED ON TRUST FUND	0.00	22,425,381.53	20,995,429.94
FUTA TAX CREDITS	273.00	4,510.60	17,373.78
OTHER CHANGES	<u>13,172,180.24</u>	<u>57,777,534.15</u>	<u>294,000.57</u>
TOTAL INCREASES	18,393,494.75	513,779,544.44	490,930,387.86
<b>DECREASES:</b>			
TAXABLE EMPLOYER DISBURSEMENTS	110,612,542.45	917,981,395.51	229,745,799.21
QUIT NONCHARGE BENEFITS	20,569,035.73	142,307,966.62	33,120,948.02
OTHER DECREASES	125,060.25	405,047.25	(2,380,010.49)
OTHER NONCHARGE BENEFITS	<u>3,257,470.36</u>	<u>24,884,709.68</u>	<u>10,525,790.56</u>
TOTAL DECREASES	134,564,108.79	1,085,579,119.06	271,012,527.30
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	1,834,495,072.73	1,834,495,072.73	2,442,361,340.79
BALANCING ACCOUNT	<u>(412,590,219.30)</u>	<u>(412,590,219.30)</u>	<u>(457,734,428.06)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,421,904,853.43</u></u>	<u><u>1,421,904,853.43</u></u>	<u><u>1,984,626,912.73</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,388,257,071 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. \$2,128,551 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$38,513,400 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.

09/28/2020

**DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RECEIPTS AND DISBURSEMENTS STATEMENT  
FOR THE MONTH ENDED 08/31/20**

<b>RECEIPTS</b>	<b>CURRENT ACTIVITY</b>	<b>YEAR TO DATE</b>	<b>PRIOR YEAR TO DATE</b>
TAX RECEIPTS/RFB	\$1,863,282.45	\$306,337,114.30	\$338,259,814.40
SOLVENCY	497,459.48	122,970,590.64	131,472,684.93
ADMINISTRATIVE FEE	(19.33)	367.38	623.65
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	11,164.98	2,821,950.72	2,921,452.27
UNUSED CREDITS	(577,233.02)	2,130,331.80	3,861,588.97
GOVERNMENTAL UNITS	10,270,378.83	40,036,935.95	7,326,224.77
NONPROFITS	7,509,009.78	49,199,643.43	6,992,433.03
INTERSTATE CLAIMS (CWC)	189,624.91	2,110,204.04	3,490,845.48
ERROR SUSPENSE	(109,734.70)	37,924.47	2,786.78
FEDERAL PROGRAMS RECEIPTS	211,416,806.16	2,476,922,303.55	(242,630.62)
OVERPAYMENT COLLECTIONS	3,785,498.17	17,723,854.72	12,774,609.71
FORFEITURES	8,351.00	92,257.72	26,989.00
BENEFIT CONCEALMENT INCOME	19,558.58	406,289.81	491,028.02
EMPLOYER REFUNDS	(371,462.03)	(2,804,556.35)	(3,362,844.64)
COURT COSTS	17,418.71	243,338.02	322,138.01
INTEREST & PENALTY	361,168.42	2,417,521.99	2,540,507.79
CARD PAYMENT SERVICE FEE	1,295.20	10,917.36	2,433.44
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	27,732.66	642,664.50	745,848.05
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	639.00	4,653.43	25,838.64
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	5,299.00	10,061.50	0.00
SPECIAL ASSESSMENT FOR INTEREST	1,777.68	13,133.67	13,634.12
EMERGENCY ADMIN GRANT-EUISAA 2020	0.00	18,914,772.00	0.00
EMERGENCY UC RELIEF (EUR)	13,113,200.00	38,513,400.00	0.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	22,425,381.53	20,995,429.94
MISCELLANEOUS	10,400.15	123,178.31	52,321.56
<b>TOTAL RECEIPTS</b>	<b>\$248,051,616.08</b>	<b>\$3,101,304,234.49</b>	<b>\$528,713,757.30</b>
<b>DISBURSEMENTS</b>			
CHARGES TO TAXABLE EMPLOYERS	\$114,385,006.97	\$933,975,762.50	\$240,542,311.51
NONPROFIT CLAIMANTS	8,282,311.15	66,790,111.61	6,543,750.77
GOVERNMENTAL CLAIMANTS	9,147,947.29	53,897,131.20	6,566,922.93
INTERSTATE CLAIMS (CWC)	1,533,899.04	9,662,523.62	2,732,613.78
QUITS	20,569,035.73	142,307,966.62	33,120,948.02
OTHER NON-CHARGE BENEFITS	3,967,786.66	23,713,677.37	10,931,124.19
CLOSED EMPLOYERS	1,035.23	(212,417.05)	(11,238.84)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	279,603.66	1,640,785.21	869,251.39
EX-MILITARY (UCX)	187,318.07	1,044,899.72	278,882.08
TRADE ALLOWANCE (TRA/TRA-NAFTA)	15,919.00	609,611.09	817,655.28
DISASTER UNEMPLOYMENT (DUA)	0.00	0.00	19,310.00
FEDERAL PANDEMIC UC \$600 ADD-ON (FPUC)	156,270,792.22	2,352,471,701.38	0.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	36,751,923.00	97,019,828.00	0.00
PANDEMIC EMERGENCY UC (PEUC)	15,413,092.00	34,174,649.00	0.00
2003 TEMPORARY EMERGENCY UI (TEUC)	(669.13)	(15,966.20)	(15,760.00)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(5,026.03)	(147,632.49)	(198,857.61)
FEDERAL EMERGENCY UI (EUC)	(82,425.41)	(1,430,304.27)	(1,837,415.07)
FEDERAL EXTENDED BENEFITS (EB)	(14,193.51)	(145,180.12)	(138,142.30)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	0.00	0.00	(1,331.67)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	0.00	(2,111.09)	(5,109.02)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(168.31)	(3,807.27)	(994.78)
INTEREST & PENALTY	293,241.26	2,332,195.13	2,413,007.86
CARD PAYMENT SERVICE FEE TRANSFER	2,534.84	10,599.87	1,876.14
PROGRAM INTEGRITY	637,269.96	3,511,636.76	3,700,235.22
SPECIAL ASSESSMENT FOR INTEREST	0.00	17,151.12	11,439.97
COURT COSTS	26,982.07	266,569.66	328,852.85
ADMINISTRATIVE FEE TRANSFER	58.44	515.38	641.15
FEDERAL WITHHOLDING	(458,386.74)	(1,895,277.80)	107,108.00
STATE WITHHOLDING	(9,815,917.12)	(33,593,896.21)	480,070.15
STC IMPLEMENT/IMPROVE & PROMOTE/ENROLL EXP	0.00	0.00	114,151.84
FEDERAL LOAN REPAYMENTS	(273.00)	(4,510.60)	(17,373.78)
<b>TOTAL DISBURSEMENTS</b>	<b>\$357,388,697.34</b>	<b>\$3,685,996,212.14</b>	<b>\$307,353,930.06</b>
<b>NET INCREASE(DECREASE)</b>	<b>(109,337,081.26)</b>	<b>(584,691,977.65)</b>	<b>221,359,827.24</b>
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,496,669,295.01	\$1,972,024,191.40	\$1,741,485,034.53
BALANCE AT END OF MONTH/YEAR	<b>\$1,387,332,213.75</b>	<b>\$1,387,332,213.75</b>	<b>\$1,962,844,861.77</b>

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
CASH ANALYSIS  
FOR THE MONTH ENDED August 31, 2020

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,508,143,289.67	\$1,960,524,402.01	\$1,730,835,304.79
INCREASES:			
TAX RECEIPTS/RFB PAID	1,863,282.45	306,337,114.30	338,259,814.40
U.I. PAYMENTS CREDITED TO SURPLUS	12,814,334.52	184,554,732.93	134,353,850.37
INTEREST EARNED ON TRUST FUND	0.00	22,425,381.53	20,995,429.94
FUTA TAX CREDITS	273.00	4,510.60	17,373.78
TOTAL INCREASE IN CASH	<u>14,677,889.97</u>	<u>513,321,739.36</u>	<u>493,626,468.49</u>
TOTAL CASH AVAILABLE	<u>1,522,821,179.64</u>	<u>2,473,846,141.37</u>	<u>2,224,461,773.28</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	110,612,542.45	917,981,395.51	229,745,799.21
BENEFITS CHARGED TO SURPLUS	23,951,566.34	167,607,675.01	44,393,232.19
TOTAL BENEFITS PAID DURING PERIOD	<u>134,564,108.79</u>	<u>1,085,589,070.52</u>	<u>274,139,031.40</u>
SHORT-TIME COMPENSATION EXPENDITURES	<u>0.00</u>	<u>0.00</u>	<u>114,151.84</u>
ENDING U.I. CASH BALANCE (13) (14) (15) (16) (17)	<u><u>1,388,257,070.85</u></u>	<u><u>1,388,257,070.85</u></u>	<u><u>1,950,208,590.04</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. \$2,128,551 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

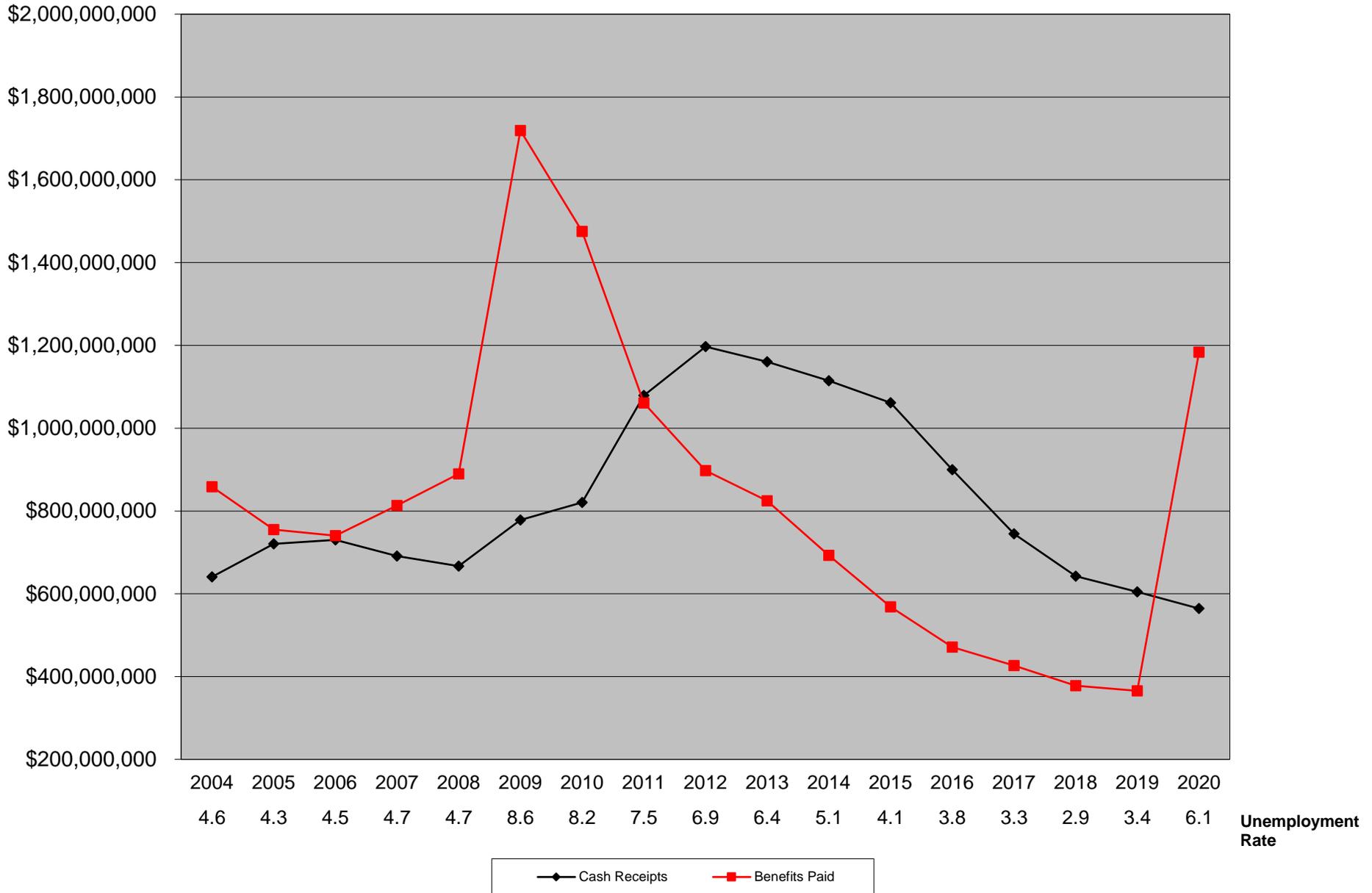
17. \$38,513,400 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-52/20 per 2103 of the CARES Act.

09/26/2020

BUREAU OF TAX AND ACCOUNTING  
U.I. TREASURER'S REPORT  
BALANCING ACCT SUMMARY  
FOR THE MONTH ENDED August 31, 2020

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$435,091,175.52)	(\$503,517,440.13)	(\$617,016,324.88)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	497,459.48	122,970,590.64	131,472,684.93
FORFEITURES	8,351.00	92,257.72	26,989.00
OTHER INCREASES	12,308,524.04	61,491,884.57	2,854,176.44
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	<u>12,814,334.52</u>	<u>184,554,732.93</u>	<u>134,353,850.37</u>
TRANSFERS BETWEEN SURPLUS ACCTS	(9,867.54)	17,902,488.20	14,004,304.07
INTEREST EARNED ON TRUST FUND	0.00	22,425,381.53	20,995,429.94
FUTA TAX CREDITS	273.00	4,510.60	17,373.78
TOTAL INCREASES	<u>12,804,739.98</u>	<u>224,887,113.26</u>	<u>169,370,958.16</u>
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	20,569,035.73	142,307,966.62	33,120,948.02
OTHER NON-CHARGE BENEFITS	3,382,530.61	25,299,708.39	11,272,281.17
MISCELLANEOUS EXPENSE	0.00	0.00	3.00
BENEFITS CHARGED TO SURPLUS SUBTOTAL	<u>23,951,566.34</u>	<u>167,607,675.01</u>	<u>44,393,232.19</u>
SHORT-TIME COMPENSATION EXPENDITURES	0.00	0.00	114,151.84
BALANCE AT THE END OF THE MONTH/YEAR	<u>(446,238,001.88)</u>	<u>(446,238,001.88)</u>	<u>(492,152,750.75)</u>

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



October 15, 2020

Dear Members of the Unemployment Insurance Advisory Council:

The Department promulgated an emergency rule in response to the COVID-19 pandemic 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. The Council unanimously supported the first 60-day extension of this emergency rule that JCRAR approved on September 17, 2020. The emergency rule will expire December 4, 2020 unless it is extended.

As you recall, the emergency rule implements recent changes to federal law regarding the requirements for work search. Under the 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 USC. 1103(h)(3)(B). Wisconsin's share of the \$500 million is about \$9.457 million, which it needs to fund the administration of the unemployment insurance program.

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, s. 4102(b). Thus, this rule is consistent with recent federal law. *See* 42 U.S.C. § 1103(h)(3)(B).

As the Department stated in its August letter to you, the pandemic continues to burden Wisconsinites with continued sharp increases in recent infection counts. The emergency that this rule addresses still exists. As we proceed through autumn, we are still seeing high unemployment and a low number of job opportunities for the unemployed. If the emergency rule is not extended, claimants will need to conduct four work searches each week starting with the week of December 6, 2020 (unless a waiver applies).

The Department will again request a 60-day extension of this emergency rule from the Joint Committee for the Review of Administrative Rules and I ask the Council to again support this request. The extension will ensure that DWD may continue to administer the unemployment insurance program as efficiently as possible during the pandemic and that fewer claimants' benefit claims are held for adjudication. 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,



Robert Cherry, Deputy Secretary

**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 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 September 23, 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. If the employer meets the  
9 requirements of s. DWD 120.01, the employee is deemed to be aware of the availability of  
10 unemployment insurance for the purposes of this subsection.

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

Dated this 29<sup>th</sup> day of September, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By:

\_\_\_\_\_  
Robert Cherry, Deputy Secretary

**State of Wisconsin  
Department of Workforce Development**

**NOTICE OF PUBLIC HEARING**

**Ch. DWD 120  
Notification of Availability of Unemployment Insurance**

**Emergency Rule [EmR2034](#)**

The Wisconsin Department of Workforce Development (DWD) announces that it will hold a public hearing on emergency rule EmR2034 relating to providing notification of the availability of unemployment insurance to employees at the time of separation from employment.

**Hearing Information**

Date: November 10, 2020  
Time: 10:00 am – 11:00 am  
Location: Webex meeting at the following link:

<https://dwdwi.webex.com/dwdwi/onstage/g.php?MTID=e0ba51ef8e60d93bf96cd6b29da27521f>

Meeting number: 145 576 4532  
Password: DWD1

The hearing can also be accessed with the following telephone numbers and access code:

+1-855-282-6330 US TOLL FREE  
+1-415-655-0003 US TOLL  
Access code: 145 576 4532

**Accessibility**

If you have special needs or circumstances regarding communication or accessibility at the hearing, please contact Mark Kunkel, DWD Rules and Records Coordinator, at (608) 267-7713 or [markd.kunkel@dwd.wisconsin.gov](mailto:markd.kunkel@dwd.wisconsin.gov) no later than noon, November 6, 2020. Accommodations or language interpretation will be made available on request to the fullest extent possible.

**Appearances at the Hearing and Submittal of Written Comments**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions.

Written comments may be submitted by email to [DWDAdminRules@dwd.wisconsin.gov](mailto:DWDAdminRules@dwd.wisconsin.gov) or through DWD's website: <https://dwd.wisconsin.gov/dwd/admin-rules/>. Written comments must

be received on or before November 10, 2020, to be included in the record of rulemaking proceedings.

The analysis and text of the emergency rule may be accessed at the following link:

[https://docs.legis.wisconsin.gov/code/emergency\\_rules/all/emr2034](https://docs.legis.wisconsin.gov/code/emergency_rules/all/emr2034)

**Agency Contact Person**

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Department of Workforce Development  
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**Agency Small Business Regulatory Coordinator**

Jennifer Wakerhauser, Deputy Legal Counsel  
Department of Workforce Development  
(608) 266-2140