UNEMPLOYMENT INSURANCE – PROGRAM UPDATE AND HOT LEGAL TOPICS

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Employment and Training Administration
U.S. Department of Labor

NASWA Legal Workshop -- September 10, 2019
Transitions

• New Acting Secretary (as of July 22, 2019)
  • Patrick Pizzella

• New Assistant Secretary of Employment and Training
  • John Pallasch (confirmed July 11, 2019)

• Within OUI
  • Tom Stengle, Director of Fiscal and Actuarial Services (Ron Wilus retired)
  • Hiring a new Director of Legislation
Overview

- Reemployment Services and Eligibility Assessment
  - New Law and New Program

- UI & Drug Testing

- President’s FY 2020 Budget Proposals

- Recently Issued Guidance
  - DUA Claims Documentation and Late Appeals
  - IT Modernization Checklist
  - Other Recent Guidance

- Coming Attractions!
  - State Self-Assessment Tool and Review
  - UI Directors’ Guide
  - Confidentiality
  - Work Search Model Legislation
  - Other Guidance in Development

- Recently Added Resources

- Questions
REEMPLOYMENT SERVICES AND ELIGIBILITY ASSESSMENT

New Law and New Program
RESEA: New Permanent Program

• Reemployment Eligibility Assessment (REA) Program
  • Began 2005

• Reemployment Services and Eligibility Assessment (RESEA) Program
  • Based on study of Nevada model combining reemployment services with eligibility assessment.
  • 2015-Present
  • Expansion of RESEA
  • Historic focus on claimants profiled as likely to exhaust and UCX
  • Permanently authorized as new program in 2018
Reemployment Services and Eligibility Assessments

• Delivery of reemployment services and continuing eligibility assessment of UI claimants by appropriately trained staff.

• Evidence shows RESEAs –
  • Reduce UI claim duration by providing labor market information, a reemployment plan, career services, and, as needed, referrals to training and education; and
  • Ensure UI program integrity by assessing and confirming the continued UI eligibility of RESEA participants.

• Currently 50 states and jurisdictions operate RESEA programs.
RESEA Summary Operational in 50 States during FY 2019

- FY 19 Grantee
- Providing RESEA Using Carry-Over
- Not Participating.

- Establishes a permanent authorization for the RESEA program
- Maintains RESEA as a voluntary program
- Provides authorized funding levels and “funding cap” adjustments through FY 2027
- Introduces several new requirements
- Phased implementation starting at enactment
SSA Section 306(b) -- Purpose

1. “To improve employment outcomes of individuals that receive unemployment compensation and to reduce average duration of receipt of such compensation through employment.”

2. To strengthen program integrity and reduce improper payments of unemployment compensation

3. To promote alignment with the vision of the Workforce Innovation and Opportunity Act of increased program integration and service delivery.

4. Establish RESEA as an entry point to other workforce system partners.
RESEA: New Requirements

1. **Use of evidence-based strategies and evaluations.** (Section 306(c) & (d) of the Social Security Act (SSA), 42 USC 506(c) & (d)). Detailed guidance (UIPL/TEGL) coming soon.

2. **Increased state discretion in participant selection.** (UIPL No. 07-19, Sec. 6)

3. **Submission and approval of annual RESEA state plan.** (Section 306(e), SSA, 42 USC 506(e)). State Plan format is in development.

4. **Formula allocation of funding and new funding requirements.** (Section 306(f), SSA, 42 USC 506(f) and see base funding allocation formula in Vol. 84 Federal Register, p. 39018 (August 8, 2019).
RESEA: Evidence-based Strategies and Evaluations

• Funds must be used for interventions or strategies demonstrated to reduce claim duration by improving employment outcomes.

• New detailed guidance (UIPL/TEGL) is coming soon! Also, technical assistance webinars can be found on rc.workforcegps.org.

• Interventions and strategies not backed by evidence must be under evaluation.

• Up to 10 percent of a State’s RESEA funds may be used for evaluations. Exploring options for consortia of states to conduct evaluations.
RESEA: Targeting Participants

- States have significant discretion in selecting participants.
- States may opt to continue targeting current populations:
  - UI claimants determined to be most likely to exhaust benefits under the methods established for the state’s Worker Profiling and Reemployment Services (WPRS) program; and
  - transitioning veterans receiving Unemployment Compensation for Ex-Servicemembers (UCX).
- WPRS remains a separate statutorily required program. Section 303(j), SSA.
- RESEA programs that do not include WPRS selection models in program design will not satisfy WPRS requirements.
RESEA: Annual State Plan

- Annual RESEA State Plan that must include:
  - Assurance/description of proper notification and scheduling accommodations;
  - Assurance/description of how the program design meets the 4 goals of RESEA, including evidence-based requirements; and
  - Description of any evaluations conducted during previous year.

- Standardized fillable template coming soon!

- Seeking input via Paperwork Reduction Act approval process/Federal Register Notice (coming soon!).
RESEA: Formula Allocation and Funding Requirements- Base and Outcome

- Beginning in FY 2021 ETA must allot funding to states under two categories:
  - Base funding: Distributed via formula
    - Based on public input, DOL issued base year funding allocation formula on August 8, 2019, via Federal Register Notice (84 FR 39018)
  - Outcome Payments: Distributed to states that meet or exceed outcome goals (in development)

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RESEA: Formula Allocation and Funding Requirements- Evidence Based

- Beginning in FY 2023 states will be required to use a percentage of their grant funds on evidence-based strategies with high or moderate causal evidence rating.
- This rate will increase over time from 25% to 50%.
- The Department will define “high” and “moderate” causal evidence ratings.

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RESEA: When do new requirements take effect?

**FY 2019**
- Evidence-based requirement
- Flexibility in targeting
- ETA will seek input on base funding formula allocation and publish by September 30, 2019 (completed)

**FY 2020**
- RESEA State Plan will be implemented

**FY 2021**
- Formula allocation begins
- DOL reports to Congress on promising reemployment practices

**FY 2023**
- Evidence-based funding in use
  - 25% FYs 2023 and 2024
  - 40% FYs 2025 and 2026
  - 50% FY 2027 and later
RESEA: Funding Outlook

- FY 2019 funding increased to $150 million
- FY 2020 RESEA guidance is being developed
  - USDOL will also provide further technical assistance
- BBA provides both authorizations and cap adjustments
  (Section 30206(c) and (d), BBA, 2 USC 901(b)(2)(E) and 2 USC 645(g))

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UI & DRUG TESTING
Drug Testing by State UI Agencies

• Section 2105 of the Middle Class Tax Relief and Job Creation Act of 2012 added subsection (l) to Section 303 of the Social Security Act (42 U.S.C. 506(l)) to permit states to enact legislation to test a UC applicant for unlawful use of controlled substances (drugs) as a condition of UC eligibility if the applicant –

• Was terminated from employment with his/her most recent employer (as defined under state law) because of the unlawful use of controlled substances; or

• Is an individual for whom suitable work (as defined under state law) is only available in an occupation that regularly conducts drug testing as determined under regulations issued by the Secretary of Labor (Secretary).
Drug Testing by State UI Agencies

• USDOL issued a Rule at 20 CFR Part 620 designating occupations that regularly conduct drug testing in August 2016.

• In March 2017, the President signed the joint resolution passed by Congress disapproving this Rule.

• Consistent with the resolution of disapproval, on May 11, 2017, the Department published a Final Rule removing 20 CFR Part 620 in the *Federal Register*.

• On May 17, 2017, the Department issued **UIPL No. 01-15, Change 2** rescinding UIPL No. 01-15, Change 1, which addressed questions regarding drug testing permitted under 20 CFR Part 620.
Drug Testing by State UI Agencies

• As a result of the removal of 20 CFR Part 620, states no longer have authority to drug test applicants for UC for whom suitable work is only available in occupations that regularly conduct drug testing for unlawful use of controlled substances.

• There is no authority to drug test under these conditions until there is a new rule promulgated.

• Currently, state UI agencies are only permitted to conduct drug testing under the first prong of the drug testing provision which permits testing of an applicant who was terminated from employment with the applicant’s most recent employer because of the unlawful use of a controlled substance.
Drug Testing by State UI Agencies

- In November, 2018, the Department of Labor published a Notice of Proposed Rulemaking (NPRM) setting out a proposal for a new draft rule to identify occupations that regularly conduct drug testing at 20 CFR Part 620.

- While keeping many of the occupations identified in the first rule, the new draft rule proposed a substantially different approach.

- It permits, but does not require, states to test UC applicants for whom suitable work is only available in an occupation where the state has a factual basis to determine that employers conduct drug testing as a standard eligibility requirement for obtaining or maintaining employment in the identified occupation.
Drug Testing by State UI Agencies

- This NPRM noted that the new approach recognizes states' diverse situations -- It did not have the “one size fits all” approach of the first rule.

- In response to that NPRM, the Department received 211 public comments. It is currently reviewing these comments and developing the Final Rule.

- The Department expects to publish the Final Rule later this calendar year.
PRESIDENT’S FY 2020 BUDGET

Relevant State Unemployment Insurance Employment Services Operations (SUIESO) budget provisions
President’s FY 2020 Budget Request

• State Administration funding of $2.44 billion.

• This amount funds operations to process, on average, 1,758,000 continued claims per week.

• Integrity Center operations would be funded at $6 million.

• Reemployment Services and Eligibility Assessments (RESEA) at $175 million which is an increase of $25.0 million over FY 2019 enacted amount.

• The request for National Activities funding is $48 million, which includes a one-time request of $36 million for ICON modernization (otherwise the amount is flat at $12 million).
FY 2020 President’s Budget Proposal

• Integrity-related funding proposal

• $90 million for grants to states from State Administration for two targeted purposes:
  
  • $45 million for supplemental funding to support implementation of online technology solution for reporting work search activities at time of weekly certifications

  • $45 million for additional state staff for verification and adjudication activities related to working cross-matches and to prevent, establish, and recover improper payments.
The President’s budget proposal includes several key legislative initiatives related to the UI program:

- UI Program Integrity
- Minimum Solvency Standard
- Paid Parental Leave
- UI IT Modernization Consortia
  - Add additional year to spend funds awarded in FY 2015 and beyond.
UI Program Integrity Provisions

• Require states to use the State Information Data Exchange System (SIDES) to exchange information with employers about reasons for a claimant’s separation.

• Require states to cross match against the National Directory of New Hires (NDNH).

• Require states to cross match with SSA’s prisoner database and other repositories of prisoner information.

• Allow Secretary of Labor to establish UI corrective actions for poor state performance or to reduce improper payments,
UI Program Integrity Provisions (cont’d)

- Allow states to retain up to 5 percent of UI overpayments for program integrity uses.

- Require states to use penalty and interest collections solely for UI program administration.

- Require states to implement the UI Integrity Center’s Integrity Data Hub (newly added in the FY 2020 budget proposal).
Minimum Solvency Standards

• Many State Unemployment Trust Fund accounts have not recovered from the impact of the Great Recession and do not have sufficient reserves to weather a future recession.

• The budget proposes to strengthen trust fund solvency by applying the FUTA credit reduction rules to states that have an Average High Cost Multiple (AHCM) of less than 0.5 on two or more consecutive January firsts.
Paid Parental Leave Proposal

• States would be required to provide six weeks of paid family leave to new mothers and fathers, including adoptive parents.

• Uses the Unemployment Insurance system as a base for the new program.

• Allows States to establish paid parental leave programs in a way that is most appropriate for their workforce and economy. States would have latitude to design and finance the program.

• Budget includes $750 million for start-up costs.
ETA’s recent Unemployment Insurance Program Letters (UIPLs) and Training and Employment Notices (TENs)
DUA Claims Docs and Late Appeals

- **UIPL No. 09-19**, issued on March 15, 2019, provides major guidance on DUA claims documentation and DUA appeals.

- General rule: DUA claimants have 21 days after filing claim to submit proof of employment/self-employment and earnings.
  - No evidence of employment = benefits stop.
  - No evidence of earnings = claimant received only minimum benefit amount.
DUA Claims Docs and Late Appeals

• **UIPL No. 09-19**, provides the following clarifications:

  • Documentation of Employment after 21 days – If a claimant submits late documentation proving employment, *and state law allows a redetermination*, then the state must reconsider the matter consistent with its law. The 21-day rule is not a limit on when the state can accept documentation if state law provides for redeterminations. Instead, it is a limit on how long DUA is payable pending documentation of employment.

  • Documentation of Wages after 21 days – If the individual’s DUA WBA was reduced because the individual only submitted employment and not wage documentation, the individual may submit necessary documentation to substantiate wages earned during the base period at any time prior to the end of the Disaster Assistance Period.
DUA Claims Docs and Late Appeals

• The UIPL notes States, in some circumstances, may request extension of 21-day document submission deadline

• The Stafford Act (42 USC 5141) and its implementing regulations (44 CFR 206.5(h)) permit the Department to modify or waive, for a major disaster, administrative conditions that would otherwise prevent federal assistance if the inability to meet such conditions is a result of the major disaster.

• The Department may grant requests for extension of the 21-day period if a major disaster significantly devastates an impacted area (such as the devastation experienced in the aftermath of Hurricanes Katrina, Rita, Sandy, Irma, and Maria).
DUA Claims Docs and Late Appeals

- **UIPL No. 09-19** also addresses late filing of DUA Appeals

  - Applicant may appeal a DUA determination or redetermination within 60 days from the date the determination or redetermination in the same manner and to the same extent as provided to regular UC claimants under state law. 20 CFR 625.10(a)

  - If a state’s UC law has a “good cause” provision (or other similar provision or exception) for late filing of regular UC appeals, such provision applies to DUA appeals.

  - The state must examine the reason for the late filing in the same manner and to the same extent that it does for untimely filed regular UC appeals.
IT Modernization Checklist

- **UIPL No. 11-18**, issued August 17, 2018, requires states to provide ETA a report six (6) months before going live with new UI operating system.

- **TEN No. 29-18**, issued May 31, 2019, announces the new, updated UI IT modernization pre-implementation checklist
  - Use checklist attached to UIPL No. 11-18 for reporting
  - Seeking OMB approval of new checklist in the TEN
  - When approved, new UIPL will be issued regarding Report to ETA
Other Recent Guidance

• **UIPL No. 13-19** – NDNH and SDNH Guidance and Best Practices

• **UIPL No. 02-19** – Recovery of Certain UC Debts under the Treasury Offset Program

• **TEN No. 25-18** – Changes to the UI Performance Excellence Awards
COMING ATTRACTIONS!

Key UI Guidance/Resources Currently in Development
State Self-Assessment Tool and Review

• New state-conducted and operational-focused review process. UIPL No. 18-17.

• 15 Functional/Program areas reviewed – including Lower Authority and Higher Authority Appeals.

• Inaugural use concluded in April, 2019.

• Next Steps
  • Temporary hiatus for post-implementation review.
  • Gather states feedback on how to improve the tool and process
  • Make revisions.
  • Re-implement on a new frequency review cycle.
UI Directors’ Guide


- USDOL is reviewing and updating this resource.

- Hope to have new version available by end of CY 2019.
Confidentiality – Guidance in Development

• USDOL is developing a Federal Register Notice designating Federal agencies deemed to have adequate safeguards and an appropriate method of payment of reimbursement of cost.

• The benefits of information received by State UC agencies from the Internal Revenue Service (IRS) & Department of Health and Human Services (HHS) and the benefits of the information received by the IRS & HHS from State UC agencies are approximately equal.

• As a result, once published, State agencies will be able to disclose confidential UC information to these two Federal agencies without needing to satisfy the agreement requirements of 20 CFR 603.10.
Work Search Model Legislation

• USDOL is developing model legislation for state work search laws.

• A TEN will be released sharing the model legislation for States to consider.
Other Guidance in Development

• RESEA: FY2020 funding solicitation, instructions, and allocation; state plan requirements; and evaluation guidance

• Alternative Base Period UIPL

• Identity Verification Process Requirements

• Work Search UIPL
Recently Added Resources

- 2019 Comparison of State UC Laws

- Unemployment Compensation: Federal–State Partnership Paper (newly updated)


- TEN No. 08-18, *Availability of Disaster Unemployment Assistance (DUA) Training* (November 9, 2018)

- TEN No. 07-18, *Availability of Unemployment Insurance (UI) Appeals Hearing Officer Training* (September 7, 2018)

- TEN No. 06-18, *Publication of the Unemployment Insurance (UI) Call Center Best Practices Compilation* (August 31, 2018)
In Closing: Why we do the work we do

- UI Program has endured and is still evolving over 84 years

- Importance of UI Program
  - Income Maintenance
  - Economic Stabilization
  - Keeping Trained Workers Attached to Local Labor Markets
Questions