

DRAFT LEGISLATION – TEMPORARY THREE-YEAR “LOOK-BACK”

DISCUSSION

Below is suggested legislative language for states that choose to amend their extended benefits (EB) law to provide for a temporary three-year “look-back” when determining “on” and “off” indicators as provided in Section 502 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312. This language supplements the draft language for subparagraphs (a)(2)(A) and (C) transmitted in Attachment II to UIPL No. 45-92 by creating a new subsection (b).

This suggested legislative language pertains to both the mandatory insured unemployment rate (IUR) indicator and the optional total unemployment rate (TUR) indicator. Although, in general, states are currently “on” EB through the TUR indicator, states, particularly those with temporary TUR indicators, may want to adopt the language pertaining to the IUR indicator as well as the TUR indicator language. (If authority for the three-year look-back is extended beyond December 31, 2011, it would be possible to remain “on” EB through the IUR indicator after states’ temporary TUR indicators expire due to lack of continued 100 percent Federal funding of most EB costs.) States that have not been “on” EB during this recession may not wish to adopt any of this language, as it would have no practical effect.

There are two parts of the suggested legislative language that states may want to customize—the effective date and expiration date of this provision. The effective date was written to become effective upon enactment of P.L. 111-312. The bracketed bold language following is an alternative effective date based on the date established under state law, if it is later than the date of enactment of P.L. 111-312. The expiration date was written to mirror the current statutory end date for the three-year “look-back” – December 31, 2011. The bracketed bold language following provides an alternative, based on the possibility that Congress will extend this provision. It ties expiration of the provision to the date Congress chooses. There also are placeholders in bold for insertion of citations to the appropriate sections of the state’s code.

DRAFT LANGUAGE

(b)(1) With respect to compensation for weeks of unemployment beginning after date of enactment of P.L. 111-312 **[or, if later, the date established under State law]**, and ending on or before December 31, 2011 **[or the date established in Federal law permitting this provision]**--

(A)(i)(I) there is a State "on" indicator for a week if the average rate of insured unemployment under **section XX of the state’s code** for the period consisting of such week and the immediately preceding twelve weeks equals or exceeds 5 percent, and

(II) the average rate of insured unemployment under **section XX of the state's code** for the period consisting of such week and the immediately preceding twelve weeks equals or exceeds 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding three calendar years;

(ii) there is a State "off" indicator for a week based on the rate of insured unemployment only if for the period consisting of such week and the immediately preceding twelve weeks, paragraph (1)(A)(i) does not result in an "on" indicator.

(B)(i)(I) there is a State "on" indicator for a week if the average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 6.5 percent, and

(II) the average rate of total unemployment in the State (seasonally adjusted), as determined by the United States Secretary of Labor, for the 3-month period referred to in subclause (I), equals or exceeds 110 percent of such average for any or all of the corresponding 3-month periods ending in the 3 preceding calendar years;

(III) there is a "high unemployment period" as provided in **section YY of the state's code** if subclause (I) were applied by substituting "8 percent" for "6.5 percent";

(ii) there is a State "off" indicator for a week based on the rate of total unemployment only if for the period consisting of the most recent 3 months for which data for all States are published before the close of such week, paragraph (1)(B)(i) does not result in an "on" indicator.