

# Regulatory Analysis Form

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**(1) Agency**

Department of Labor and Industry  
Bureau of Unemployment Compensation Benefits and Allowances

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REVIEW  
REGULATORY

**(2) I.D. Number (Governor's Office Use)**

12-56

IRRC Number: 2166

**(3) Short Title**

Reasonable Assurance Regulation

**(4) PA Code Cite**

34 Pa. Code, Chapter 65,  
Subchapter I, §65.161

**(5) Agency Contacts & Telephone Numbers**

Primary Contact: Jeri Morris

(717) 787-6337

Secondary Contact: Pete Cope, Director, (717) 787-3547

**(6) Type of Rulemaking (Check One)**

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

**(7) Is a 120 Day Emergency Certification Attached?**

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

**(8) Briefly explain the regulation in clear and nontechnical language.**

The regulation will provide criteria for determining eligibility for unemployment compensation (UC) benefits based on service for governmental and nonprofit educational institutions and educational service agencies (educational employers). This regulation provides that a reasonable assurance of returning to work for an educational employer includes: (1) a bona fide offer, and (2) an economically equivalent position from one academic period to the next.

**(9) State the statutory authority for the regulation and any relevant state or federal court decisions.**

The regulation is proposed under Section 201(a) of the Unemployment Compensation Law (Law) (43 P.S. § 761(a)), which authorizes the Department of Labor and Industry (Department) to promulgate and amend rules and regulations necessary to administer the Law.

# Regulatory Analysis Form

**(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.**

Yes, the regulation is necessary in order to bring Pennsylvania's UC eligibility criteria into conformity with the requirements of the United States Department of Labor (USDOL) under Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. § 3304(a)(6)(A)), as set forth in Unemployment Insurance Program Letter (UIPL) 4-87. USDOL has required that Pennsylvania implement UIPL 4-87, and supports this regulation defining reasonable assurance.

**(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?**

There is a compelling public interest to avoid nonconformity with federal law, which threatens federal funding and tax credits. Without federal funding, the UC and employment service (ES) programs could not successfully function.

If the FUTA tax credit were lost because Pennsylvania was ruled to be out of compliance with FUTA, the resulting loss of FUTA credit would increase the FUTA taxes paid by Pennsylvania employers as much as \$378 per employe per year. Based on calendar year 1998 data, Pennsylvania employers would have experienced an estimated increase of \$1.8 billion in FUTA taxes had they lost their FUTA tax credit.

Based on federal program year 1998-1999 data for ES and federal fiscal year 1998-1999 data for UC, a loss of UC and ES administrative funding from the federal government would cost Pennsylvania \$148.76 million.

**(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.**

There are no public health, safety or environmental risks associated with nonregulation. However, the general welfare risk associated with nonregulation is that Pennsylvania could lose tax credits and federal funding for its UC and ES programs, which would adversely affect all employers and employes in the Commonwealth.

**(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)**

Employes of educational employers will benefit from this proposed regulation.

Section 402.1 of the Law requires a denial of benefits to an employe of an educational employer during breaks between academic years or terms, or breaks for vacations or holidays, if the employe performed services in the academic period prior to the break and has a reasonable assurance of performing services in the subsequent academic period. Under current law, however, the economic terms and conditions of the job offered in the subsequent academic period are not considered.

For example, a professional school employe who worked as a full-time substitute teacher in the first academic year is told that his name is being placed on the per diem substitute teacher list for the second academic year. Although the economic terms and conditions of the employment offered in the second academic year could be substantially less favorable for the employe, under current law he has a reasonable assurance of performing services in an "instructional" capacity following the summer break and is denied benefits under Section 402.1(1) of the Law during the break.

# Regulatory Analysis Form

## **(13) Continued.**

The proposed regulation will require that the economic terms and conditions of the work offered in the second academic period should not be substantially less than the economic terms and conditions of the work performed in the first academic period in order for the employe to have reasonable assurance of performing services in the second period. This requirement is consistent with USDOL's interpretation of FUTA in UIPL 4-87. The regulation would permit employes of educational employers to qualify for UC benefits during regularly scheduled non-school periods, if they are offered an economically inferior position.

There are 3,863 (Second Quarter 1999) educational employers in Pennsylvania and they employ a total population of 443,073 (April 1999). The total population of school employes will not benefit by the proposed regulation. It is impossible to determine how many school employes, out of the total population, will benefit.

2,303 claimants were denied benefits under Section 402.1 of the Law during calendar year 1998. Assuming that all of these claimants would have been eligible for benefits if the proposed regulation had been in place at that time, UC benefit payments to employes of educational employers would have increased by an estimated \$2.9 million for 1998.

NOTE: The number of claimants who did not apply for benefits under the current law, but may apply for benefits as a result of the proposed regulation, cannot be determined and, therefore, the amount of additional benefits attributable to them is not provided.

## **(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)**

Pennsylvania's 3,863 educational employers (elementary and secondary schools, colleges, universities, professional schools, junior colleges and employer service agencies) could be adversely affected by the proposed regulation.

Under current law, a reasonable assurance of returning to work can exist even if the employment offered for the second academic period is not economically equivalent to the employment in the first academic period. Under the proposed regulation, the requirements for establishing the existence of reasonable assurance will be more rigid. It may be difficult for school employers to assure economically equivalent employment for persons who had been full-time teachers but are now day-to-day substitutes who will be called to work as needed.

## **(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)**

The regulated community consists of educational employers (3,863) and their employes (443,073). However, the proposed regulation will not require any action by the employes. The proposed regulation provides for more rigid standards for a school employer to establish that an employe has a reasonable assurance of performing services in the next academic period.

# Regulatory Analysis Form

**(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.**

By letter, the Bureau of UC Benefits and Allowances (Bureau) solicited comments on the draft of the proposed regulation from the following individuals and entities:

Mr. Leon Boncarosky, Director  
Bureau of Personnel  
Pennsylvania Department of Education  
333 Market Street, Harrisstown 2  
Harrisburg, PA 17126

Mr. Greig W. Mitchell, Vice Chancellor  
Finance and Administration  
State System of Higher Education  
Dixon University Center  
2986 North Second Street  
Harrisburg, PA 17110

Ms. Rosalie Bloom-Brooks, Manager  
UC Benefits  
Pennsylvania State University  
120 South Burrowes Street  
University Park, PA 16801

Ms. Nancy Robbins, Executive Director  
Pennsylvania Intermediate Unit Association  
Central IU 10  
RD 1 Box 374  
West Decatur, PA 16878

Mr. Joseph V. Oravitz, Executive Director  
Pennsylvania School Boards Association  
774 Limekiln Road  
New Cumberland, PA 17070

Dr. Carolyn C. Dumaresq, Executive Director  
Pennsylvania State Education Association  
400 North Third Street  
Harrisburg, PA 17101

Mr. John Tarka, Executive Director  
Pennsylvania Federation of Teachers Union  
10 South 19th Street  
Pittsburgh, PA 15203

Mr. Geoffrey D. Moomaw, Partner  
Interstate Tax Service Bureau  
P.O. Box 247  
Camp Hill, PA 17001-0247

Mr. Scott D. Briggs, President  
Heiss, Gibbons and Company, Inc.  
7 East Main St.  
Mechanicsburg, PA 17055

Mr. Richard Fellars, Business Manager  
Pittsburgh City School District  
341 South Bellefield Ave.  
Pittsburgh PA 15213-3516

Ms. Sharon Kirk, Superintendent  
DuBois Area School District  
500 Liberty Blvd.  
DuBois, PA 15801-2401

Ms. Brenda Conner, Business Manager  
Harrisburg School District  
P.O. Box 2645  
Harrisburg, PA 17105

Mr. Gregg Sunday, Business Manager  
Scranton City School District  
425 North Washington Ave.  
Scranton, PA 18503-1396

Mr. Ronald Engleman, Business Manager  
Allentown City School District  
Box 328  
Allentown, PA 18105-0328

Employees of educational employers agree with and support the regulation, because the economic equivalency part of reasonable assurance ensures the payment of UC benefits absent an offer of a financially equivalent position. The Department of Education also agrees with the proposed regulation because it clarifies the meaning of the term "reasonable assurance." However, educational employers do not agree with the regulation. With economic equivalency as a factor, fewer offers of work will constitute reasonable assurance of

# Regulatory Analysis Form

**(16) Continued**

employment in the next academic period. No significant changes were made to the proposed regulation as a result of the comments received because the regulation is necessary in order to incorporate USDOL's interpretation of reasonable assurance into Pennsylvania law, and the serious consequences of nonconformity with federal requirements.

**(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.**

2,303 claimants were denied benefits under Section 402.1 of the Law during calendar year 1998. Assuming that all of these claimants would have been eligible for benefits if the proposed regulation had been in place at that time, UC benefit costs for educational employers would have increased by an estimated \$2.9 million for calendar year 1998.

Note: The number of claimants who did not apply for benefits under the current law, but may apply for benefits as a result of the proposed regulation, cannot be determined and, therefore, an estimated cost for them is not provided.

**(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.**

UC benefit costs for local governments that are educational employers would have increased by an estimated \$1.8 million for calendar year 1998. This is part of the \$2.9 million increase referenced in Item 17 for all educational employers. See note in Item 17.

**(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.**

Pennsylvania, as an educational employer, would experience an estimated increase of \$200,000.00 in UC benefit costs for calendar year 1998. This is part of the \$2.9 million increase referenced in item 17 for all educational employers. See note in item 17.

Any increase in the cost of administering the UC program would be nominal, because no measurable increase in personnel, time or resources will be necessary to administer Section 402.1 as impacted by the regulation.

# Regulatory Analysis Form

**(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.**

	State Fiscal Year					
	1999	2000	2001	2002	2003	2004
<b>SAVINGS:</b>						
<b>Regulated Community</b>						
<b>Total Savings</b>						
<b>COSTS: (In Millions)</b>						
<b>Regulated Community</b>	\$3.0	\$3.1	\$3.2	\$3.3	\$3.4	\$3.6
<b>Local Government</b>	-----	-----	-----	-----	-----	-----
<b>State Government</b>	-----	-----	-----	-----	-----	-----
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

**(20a) Explain how the cost estimates above were derived.**

2,303 claimants were denied benefits under Section 402.1 of the Law during calendar year 1998. Assuming that all of these claimants would have been eligible for benefits if the proposed regulation had been in place at that time, UC benefit costs for educational employers would have increased by an estimated \$2.9 million for calendar year 1998. Cost estimates associated with these claimants were derived using average payments and average duration for claimants who were determined eligible for benefits under Section 402.1.

Estimates for State Fiscal Years 1999 through 2004 were calculated by inflating benefit costs by projected increases in the average benefit payment since calendar year 1998. The cost impact does not include an estimate of benefit payments to individuals who did not file for benefits but who would be eligible for benefits under the proposed regulation.

# Regulatory Analysis Form

**(20b) Provide the past three year expenditure history for programs affected by the regulation.**

State Fiscal Year/Federal Program Year				
Program	1995-1996	1996-1997	1997-1998	1998-1999
ES Administrative Expenditures (in millions)	\$39.688	\$33.897	\$34.821	\$30.592
UC Program Expenditures (in millions)	\$1,665.2	\$1,450.1	\$1,391.8	\$1,464.1
Federal Fiscal Year*				
	1995-1996	1996-1997	1997-1998	1998-1999
UC Administrative Expenditures (in millions)	\$128.717	\$118.749	\$123.365	\$125.726

\*Figures for State Fiscal Year not available.

**(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.**

In order for a state to receive federal funding and tax credits, its UC law must conform to FUTA. The emergence of a conformity issue could have substantial impact on the Commonwealth. If the Commonwealth does not adopt the regulation and is ruled to be out of conformity with federal law, the Secretary of USDOL would withdraw certification from the Commonwealth, which would abrogate funding for both the UC system and the ES. In addition, employers within the Commonwealth would lose the FUTA tax credits to which they are entitled by virtue of paying state UC taxes.

If the FUTA tax credit were lost because Pennsylvania was ruled to be out of compliance with FUTA, the resulting loss of FUTA credit would increase the FUTA taxes paid by Pennsylvania employers as much as \$378 per employe per year. For calendar year 1998, Pennsylvania employers would have experienced an estimated increase of \$1.8 billion in FUTA taxes had they lost their FUTA tax credit.

For federal program year 1998-1999 for ES, and federal fiscal year 1998-1999 for UC, a loss of UC and ES administrative funding from the federal government would have cost Pennsylvania \$148.76 million.

Therefore, the yearly maximum cost of the regulation (\$2.9 million for 1998) is less than the yearly potential loss of administrative funding and tax credits, totaling almost \$2 billion dollars, if the regulation is not adopted.

**(22) Describe the non regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.**

The Commonwealth could challenge USDOL's position that Pennsylvania is out of conformity with federal law with regard to reasonable assurance. However, if the Commonwealth contests USDOL's position unsuccessfully and is adjudged to be out of conformity with federal law, the Secretary of USDOL would withdraw certification from the Commonwealth, which would abrogate funding for the UC system and ES program, and threaten federal tax credits, worth almost \$2 billion annually.

# Regulatory Analysis Form

**(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.**

No alternative regulatory schemes appear to be available.

**(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

No, the proposed regulation adopts the federal standard as articulated in UIPL 4-87.

**(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

The regulation would not put Pennsylvania at a competitive disadvantage because the federal requirements with regard to reasonable assurance are applicable to all states.

**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

The proposed regulation would not affect other regulations of the Department or the regulations of other state agencies.

**(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

The Bureau will honor requests by parties interested in or affected by the proposed regulation to meet and discuss it. The number of such requests which will be received are unknown at this time.



# Regulatory Analysis Form

- (28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.**

No new reporting, record keeping or other paperwork will be required by this proposed regulation. However, existing UC program forms will be amended, at nominal cost, to ask questions which address the reasonable assurance criteria established by the regulation.

- (29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.**

None.

- (30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?**

The regulation will be effective upon its final publication in the *Pennsylvania Bulletin* and will apply to applications for benefits effective on and after the date of publication.

- (31) Provide the schedule for continual review of the regulation.**

A sunset date will not be necessary for this proposed regulation because it will be continuously monitored by the Bureau and the Department in the day-to-day administration of the Law and the UC program. If needed, amendments can be initiated based on the experience obtained from these operations.

<b>CDL-1</b> <b>FACE SHEET</b> <b>FOR FILING DOCUMENTS</b> <b>WITH THE LEGISLATIVE REFERENCE BUREAU</b> <b>(Pursuant to Commonwealth Documents Law)</b>		<b>RECEIVED</b> 2001 MAR -8 PM 2:39 REVIEW COMMISSION
<i>2166</i>		Do Not Write In This Space
Copy below is hereby approved as to Form and legality. Attorney General By: <i>[Signature]</i> DEPUTY ATTORNEY GENERAL SEP 14 2000 DATE OF APPROVAL <input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by: DEPARTMENT OF LABOR & INDUSTRY (AGENCY) Document/Fiscal Note No. <u>12-56</u> Date of Adoption: <u>8/31/00</u> By: <i>[Signature]</i> JOHNNY J. BUTLER Title: <u>Secretary Of Labor &amp; Industry</u> (Executive Officer, Chairman or Secretary)	Copy below is hereby approved as to form and legality. Executive or independent Agencies. By: <i>[Signature]</i> 8/31/00 DATE OF APPROVAL (Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title) <input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF  
 PROPOSED RULEMAKING  
  
 TITLE 34. LABOR AND INDUSTRY  
  
 PART II, SUBPART A. UNEMPLOYMENT COMPENSATION  
  
 CHAPTER 65. EMPLOYE PROVISIONS  
  
 SUBCHAPTER I. BENEFITS BASED ON SERVICE FOR EDUCATIONAL INSTITUTIONS  
  
 SECTION 65.161 - REASONABLE ASSURANCE

**PREAMBLE**

**DEPARTMENT OF LABOR AND INDUSTRY  
BUREAU OF UNEMPLOYMENT COMPENSATION  
BENEFITS AND ALLOWANCES  
TITLE 34. LABOR AND INDUSTRY  
PART II, SUBPART A. UNEMPLOYMENT COMPENSATION  
CHAPTER 65. EMPLOYE PROVISIONS  
[SUBCHAPTER I. BENEFITS BASED ON SERVICE FOR EDUCATIONAL INSTITUTIONS]  
SECTION 65.161 - REASONABLE ASSURANCE  
DOCUMENT I.D. NO. 12-56**

The Department of Labor and Industry (Department), Bureau of Unemployment Compensation Benefits and Allowances (Bureau), proposes the following regulation as set forth in Annex A, to be added to Title 34, Labor and Industry, Part II, Subpart A. Unemployment Compensation, Chapter 65, Employe Provisions, as Subchapter I-Benefits Based on Service for Educational Institutions, § 65.161- Reasonable Assurance. The proposed regulation provides criteria for determining the eligibility of employees of educational institutions for unemployment compensation (UC) benefits.

**A. Effective Date**

The proposed regulation will be effective immediately upon publication in the *Pennsylvania Bulletin*.

The proposed regulation will apply to applications for benefits effective on and after the date of publication.

**B. Statutory Authority**

The regulation is proposed under Section 201(a) of the Unemployment Compensation Law (Law) (43 P.S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the Law.

**C. Background and Purpose of Proposed Rulemaking**

The purpose of this proposed rulemaking is to bring the Pennsylvania UC eligibility criteria into conformity with the United States Department of Labor's (USDOL) requirements under Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. § 3304(a)(6)(A)) with regard to a principle known as "reasonable assurance."

FUTA requires the states to deny UC benefits based on services in an instructional, research or principal administrative capacity for an educational institution, for any week between two academic years or terms, if the claimant performed services in any of those capacities in the first year or term and there is a contract or reasonable assurance that the claimant will perform services in any of those capacities in the second year or term. FUTA also requires the states to deny benefits based on services in an instructional, research or principal administrative capacity for an educational institution, for any week during a vacation period or holiday recess, if the claimant performed services in any of those capacities before the vacation or holiday and there is a reasonable assurance that the claimant will perform services in any capacity after the vacation or holiday. FUTA permits the states to deny benefits based on services for an educational institution in a capacity other than instructional, research or principal administrative, for any week between two academic years or terms, or any week during a vacation period or holiday recess, if the claimant performed such services in the first year or term or before the vacation or holiday, and there is a reasonable assurance that the claimant will perform services in any capacity in the second year or term or after the vacation or holiday, respectively. FUTA also applies these denial provisions to claimants who are employed by an educational service agency. These provisions of FUTA apply to governmental and nonprofit educational institutions and educational service agencies (collectively, educational employers). *See* 26 U.S.C. § 3304(a)(6)(A).

As administrator of these provisions of FUTA, the USDOL imposes requirements on the states regarding the interpretation and application of the statute. Unemployment Insurance Program Letter 4-87, which sets forth USDOL's official interpretation of "reasonable assurance" in FUTA, provides that a reasonable assurance of employment in the second academic period exists only if there is a bona fide offer of employment and the economic terms and conditions of the employment in the second academic period are not substantially less than the terms and conditions of the claimant's employment in the first academic period. For example, if a full-time teacher is given an offer to return to work as a part-time substitute teacher in the following academic year, his employment in the second academic period would not be economically equivalent to his employment in the first academic period, as required by the USDOL. Therefore, there is no reasonable assurance and the teacher should be eligible for benefits for the summer.

Pennsylvania's implementation of the FUTA provisions regarding the eligibility of employees of educational employers is found in Section 402.1 of the Law (43 P.S. § 802.1). Subsections (1) and (2) of Section 402.1 deny benefits based on services for an educational institution, for any week between two academic years or terms. (Subsection (1) applies to services in an instructional, research or principal administrative capacity, and subsection (2) applies to services in any other capacity.) Subsection (3) denies benefits based on services in any capacity for an educational institution, for any week

during a vacation period or holiday recess. Subsection (4) extends the denial provisions of subsections (1), (2) and (3) to services performed in the employ of an educational service agency. All of the denial provisions of Section 402.1 require the existence of a contract or reasonable assurance of employment in the second academic period.

Currently, Pennsylvania does not include economic equivalency as a necessary element of reasonable assurance, and its failure to do so was brought to light in a recent case. In *Musko v. U.C.B.R.*, No. 2740 C. D. 1997 (Pa. Cmwlth., filed June 23, 1998 (unreported)), *appeal denied*, 558 Pa. 624, 737 A.2d 745 (1999), the claimant was a full-time school teacher in the first academic year and received an assurance of returning to work as a per diem or long-term substitute teacher in the second academic year. The Commonwealth Court held that the claimant was ineligible for benefits for the summer, because he worked in an instructional capacity in the first year and had an assurance of returning to work in an instructional capacity for the second year. However, the economic terms and conditions of the position offered to him for the second year were substantially less than the terms and conditions of his job in the first year. If the economic equivalency test had been applied as required by USDOL, the claimant would have been eligible for UC benefits.

To conform to FUTA, Pennsylvania and the other states can deny benefits to employees of educational employers only to the extent authorized by federal law. In *Musko*, Pennsylvania went beyond the scope of the federal law as interpreted by USDOL when it denied benefits to a claimant who was not offered an economically equivalent position for the next school year. As a result, the USDOL informed the Department that it was out of conformity with the federal law.

In order to conform to the USDOL's reasonable assurance requirements, the Department proposes this regulation.

#### **D. Summary of Proposed Rulemaking**

The proposed regulation clarifies the meaning of the term "reasonable assurance." Under the regulation, reasonable assurance would exist only if the individual receives a bona fide offer of employment for the next academic period, under economic terms and conditions that are not substantially less than the terms and conditions of the individual's employment in the first academic period.

**E. Affected Persons**

The universe of persons potentially affected by the proposed regulation consists of 3,863 educational employers and 443,073 employees of educational employers in this Commonwealth.

**F. Fiscal Impact**

In order for a state to receive federal administrative funding and tax credits, its UC Law must conform to FUTA. The emergence of a conformity issue could have substantial impact on the Commonwealth. If the Commonwealth does not adopt the regulation and is adjudged to be out of conformity with federal law, the Secretary of USDOL would withdraw certification from the Commonwealth, which would abrogate administrative funding for both the UC system and the employment service. In addition, employers within the Commonwealth would lose the FUTA tax credits to which they are entitled by virtue of paying state UC taxes.

The fiscal impact of the regulation on the UC Fund, if any, is difficult to ascertain. Employees of educational employers who are not given a reasonable assurance of returning to work, as defined by the regulation, would be eligible for UC benefits. However, eligibility for these employees could prompt affected employers to provide the level of reasonable assurance required by the regulation, thereby causing an eventual decrease in benefit payments.

Any increase in the cost of administering the UC program would be nominal, because no measurable increase in personnel, time or resources will be necessary to administer Section 402.1 as impacted by the regulation.

**G. Paperwork Requirement**

No new paperwork is required.

**H. Sunset Date**

The regulation will be monitored through practice and application. Thus, no sunset date is designated.

**I. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)) the Department submitted a copy of this proposed regulation on 4/7/01 to the Independent

Regulatory Review Commission (IRRC) and the Chairpersons of the House Labor Relations Committee and the Senate Labor and Industry Committee. In addition to submitting the proposed regulation, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, Regulatory Review and Promulgation. A copy of this material is available to the public upon request.

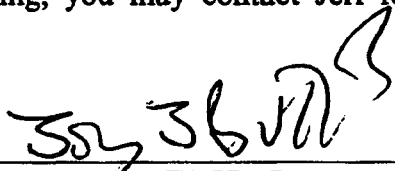
Under Section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed regulation, it will notify the Department within 10 days after the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed regulation to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly, and the Governor of objections raised, prior to final publication of the regulation.

**J. Public Comment**

Interested parties are invited to submit written comments, objections or suggestions about the proposed regulation to Jeri Morris, Department of Labor and Industry, Bureau of Unemployment Compensation Benefits and Allowances (BUCBA), 6th Floor, Labor and Industry Building, Seventh and Forster Streets, Harrisburg, Pennsylvania 17121 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Comments may also be submitted electronically at "[kwright@dli.state.pa.us](mailto:kwright@dli.state.pa.us)". A subject heading referencing the proposed regulation, name and return mailing address must be included in each transmission. In addition, all electronic comments shall be contained in the text of the transmission, not in an attachment.

For further information on this proposed rulemaking, you may contact Jeri Morris at (717) 787-6337.

  
\_\_\_\_\_  
JOHNNY J. BUTLER, Secretary

**ANNEX A**  
**TITLE 34. LABOR AND INDUSTRY**  
**PART II, SUBPART A. UNEMPLOYMENT COMPENSATION**  
**CHAPTER 65. EMPLOYEE PROVISIONS**  
**SUBCHAPTER I. BENEFITS BASED ON SERVICE FOR EDUCATIONAL INSTITUTIONS**

**§ 65.161-Reasonable Assurance**

- (a) For purposes of Section 402.1 of the Law (43 P.S. § 802.1), a contract or reasonable assurance that an individual will perform services in the second academic period exists only if both of the following conditions are met:
- (1) The educational institution or educational service agency provides a bona fide offer of employment for the second academic period to the individual.
  - (2) The economic terms and conditions of the employment offered to the individual for the second academic period are not substantially less than the terms and conditions of the individual's employment in the first academic period.
- (b) For the purposes of subsection (a), an offer of employment is not bona fide if both of the following conditions exist:
- (1) The educational institution or educational service agency does not control the circumstances under which the individual would be employed.
  - (2) The educational institution or educational service agency cannot provide evidence that the individual or similarly situated individuals normally perform services in the second academic period.



Harrisburg, PA 17120



www.dli.state.pa.us

March 2, 2001

Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harristown 2  
333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Proposed Rulemaking  
ID # 12-56

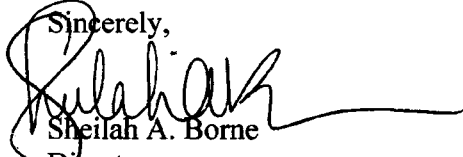
Dear Executive Director Nyce:

In accordance with the Regulatory Review Act (Act), enclosed is a copy of the face sheet, preamble, Annex A and the Regulatory Analysis Form for the proposed rulemaking which the Department of Labor & Industry (Department) intends to adopt pursuant to rulemaking authority contained in section 435 of the Act (77 P.S. § 991).

Pursuant to Section 5.1 (c) of the Act, the House Labor Relations Committee and the Senate Labor & Industry Committee have 20 days from the close of the public comment period to file comments or recommendations with the promulgating agency.

Questions concerning these regulations can be directed to Mr. Pete Cope, Director, Bureau of Unemployment Compensation Benefits and Allowances, 7<sup>th</sup> & Forster Streets, Harrisburg, PA 17110, 717-783-5421.

As always, the Department's staff is available to discuss these regulations with you or members of your staff.

Sincerely,  
  
Sheilah A. Borne  
Director  
Legislative & Public Affairs

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

RECEIVED

I.D. NUMBER: 12-56  
 SUBJECT: Reasonable Assurance  
 AGENCY: DEPARTMENT OF LABOR & INDUSTRY

2001 MAR -8 PM 2:40  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**TYPE OF REGULATION**

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
3/8/01	<i>Karen Lunden</i>	HOUSE COMMITTEE ON LABOR RELATIONS
3/8/01	<i>Mr. Eckhart</i>	
3/8/01	<i>Christine R. Fatto</i>	SENATE COMMITTEE ON LABOR & INDUSTRY
3/8	<i>Donald C. Koehler</i>	
3/8	<i>E. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
3/8	<i>C. Lu-Bran</i>	LEGISLATIVE REFERENCE BUREAU

March 2, 2001