

Regulatory Analysis Form (Completed by Promulgating Agency) (All Comments submitted on this regulation will appear on IRRC's website)	INDEPENDENT REGULATORY REVIEW COMMISSION <div style="border: 1px solid black; padding: 10px; margin: 5px auto; width: 80%;"> RECEIVED APR 19 2012 INDEPENDENT REGULATORY REVIEW COMMISSION </div>
(1) Agency: Department of Labor and Industry	IRRC Number: 2939
(2) Agency Number: Identification Number: 12-96	
(3) PA Code Cite: 34 Pa. Code § 65.11	
(4) Short Title: Active Search For Work	
(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Sean F. Creegan, 717-787-4186, screegan@pa.gov Secondary Contact: Christopher G. Giovanis, 717-787-4186, cgiovanis@pa.gov	
(6) Type of Rulemaking (check applicable box): <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation </div> <div style="width: 45%;"> <input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General </div> </div>	
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less) <p>Section 401 of the Unemployment Compensation Law ("Law"), 43 P.S. § 801, contains various eligibility criteria for unemployment compensation ("UC") benefits. As amended by Act 6 of 2011¹, subsection (b) of section 401 provides that "[c]ompensation shall be payable to any employee who is or becomes unemployed, and who- ... (b) (1) [i]s making an active search for suitable employment." This proposed rulemaking will amend 34 Pa. Code § 65.11 to contain the requirements a claimant must meet in order to be eligible for benefits under section 401(b), 43 P.S. § 801(b) ("Section 401(b)").</p>	
(8) State the statutory authority for the regulation. Include specific statutory citation. <p>This proposed rulemaking is authorized under section 201(a) of the Law, 43 P.S. § 761(a), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the Law, and Section 401(b), which directs the Department to establish the requirements a claimant must meet in order to "make an active search for suitable employment."</p>	

¹ Act of June 17, 2011, P.L.6, No. 6.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The requirement in amended Section 401(b) that a claimant make an active search for suitable employment took effect on January 1, 2012, and applies to benefit years that begin on or after that date.²

This proposed rulemaking is being promulgated in accordance with the General Assembly's directive in Section 401(b) that "[t]he requirements for 'active search' shall be established by the department ..."

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This proposed rulemaking will implement the General Assembly's directive in Section 401(b) that "[t]he requirements for 'active search' shall be established by the department ..."

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Not applicable.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

This proposed rulemaking would affect all claimants who file an application for UC benefits that takes effect on or after January 1, 2012. From 2008 through 2011, an average of 1,705,421 applications for UC were filed each year.

These claimants are affected in the sense that they must make an active search for suitable employment, as required by Section 401(b) and this regulation, in order to be eligible for UC benefits.

² See sections 9 and 11 of Act 6 of 2011.

(13) 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.

Please see number (12).

(14) 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. Explain how the dollar estimates were derived.

Subsection (b) of the proposed rulemaking requires a claimant to register for employment search services with the Pennsylvania Careerlink® system. This can be done online. Subsections (d)(1) and (2) require a claimant to apply for a certain number of positions each week. For purposes of this requirement, a claimant may apply for a position by mail, phone or electronic communication. Subsection (d)(4) enumerates seven types of job search activities other than applying directly to an employer for a position, and requires a claimant to engage in at least one of these activities during each week. Most of these activities, such as attending a job fair, posting a resume on the Pennsylvania Careerlink® system, and participating in a program or activity offered through the Pennsylvania Careerlink® system, do not involve a fee and / or can be done online. For these reasons, the Department anticipates that a claimant will be able to meet the active search requirement in Section 401(b) and this regulation at minimal or no cost.

(15) 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. Explain how the dollar estimates were derived.

Not applicable.

(16) 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. Explain how the dollar estimates were derived.

The Department will integrate administration of the active search requirement into its day-to-day administration of all of the eligibility provisions of the Law. It is not possible to accurately isolate the cost to administer only the active search provision.

(17) 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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government	Administrative costs cannot be estimated.					
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 October, 2008 – September, 2009	FY -2 October, 2009 – September , 2010	FY -1 October, 2010 – September, 2011	Current FY
Unemployment Compensation program – regular, state funded UC	\$4, 862,371,012	\$4,124,389,500	\$3,222,416,863	
Unemployment Compensation program – federally funded Emergency Unemployment Compensation (EUC)	\$1,971,808,571	\$4,178,765,879	\$3,020,070,736	
Unemployment Compensation program – federally funded Extended Benefits (EB)	\$286,505,423	\$397,461,705	\$645,790,682	

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

A cost / benefit analysis is not applicable. This proposed rulemaking is being promulgated in accordance with the General Assembly's directive in Section 401(b) that "[t]he requirements for 'active search' shall be established by the department ..."

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Because the active search requirement in amended Section 401(b) took effect on January 1, 2012, and this proposed rulemaking is required by law, public input was not sought prior to publication of the notice of proposed rulemaking. However, an opportunity for public input exists in response to the notice of proposed rulemaking.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The proposed regulation is the least burdensome alternative that includes the minimum components of an active search for work as provided by the General Assembly in Section 401(b), and establishes a meaningful work search regimen. Also, as indicated in number (14), the Department anticipates that a claimant will be able to meet the active search requirement in Section 401(b) and this regulation at minimal or no cost.

(21) 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 regulations.

With regard to regular UC, which is funded by the states, the federal government does not require claimants to actively search for work. However, all other states already have this requirement and impose their individual standards.

Other UC programs are federally funded in whole or in part. Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-servicemembers (UCX), Disaster Unemployment Assistance (DUA), Trade Readjustment Allowances (TRA) and Emergency Unemployment Compensation (EUC) are 100% federally funded. These programs, which are administered for the federal government by the states, do not have their own work search requirements. Rather, they incorporate the work search requirements found in the UC law of the state paying benefits to the claimant.

Normally, Extended Benefits (EB) is funded half by the federal government and half by the states.³ Pursuant to section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), 26 U.S.C. § 3304n, a claimant must make a "systematic and sustained effort to obtain work" during each week for which EB is sought. Federal regulations at 20 CFR § 615.2(o)(8) define the type of work search that is "systematic and sustained" for purposes of EB eligibility.

Because of the manner in which the federal EB statute interrelates with state law, it is not possible for state work search requirements for regular UC to be more stringent than federal standards applicable to EB. Section 202(a)(2) of EUCA provides that "[e]xcept where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof." Pursuant to this provision, a state's work search requirements would constitute the minimum requirements for EB. The federal requirement to make a "systematic and sustained effort" to find employment would apply only if it were more demanding than state requirements.

³ Currently EB is being funded 100% by the federal government pursuant to the American Recovery and Reinvestment Act of 2009.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Pennsylvania was the only state that did not require a UC claimant to search for work in order to qualify for benefits. The amendment to Section 401(b) to require "an active search for suitable employment" and this proposed rulemaking will put the Commonwealth in line with other jurisdictions with respect to work search as a UC eligibility criterion.

Unless an exception or alternative requirement applies, this proposed rulemaking will require a claimant to apply for employment during each week for which compensation is claimed, beginning with the third week of the benefit year. During the third through eighth weeks of the benefit year, a claimant must apply for at least two positions per week. However, the claimant may limit his applications to positions that would provide employment and wages similar to those the claimant had prior to his unemployment and are within a generally accepted commuting distance. During the ninth week of the benefit year and subsequent weeks, the claimant must apply for not less than three positions each week that would provide "suitable employment" as defined in section 4(t) of the Law, 43 P.S. § 753(t). Requiring this level of job applications is not uncommon. Sixteen states require two employer contacts per week. Fifteen states require three or more employer contacts per week.

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

No.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Subsection (c) of the proposed rulemaking requires a claimant to make a record of his work search activities that contains all information required by the Department, retain the record for two years from the effective date of the application for benefits, and produce the record for the Department's review at such times and in such format and manner as the Department requires. The Department has created a form (copy attached) that a claimant may use to make a record of work search activities. However, use of this form to record work search efforts is not mandatory.

(25) 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.

This proposed rulemaking contains provisions that are specific to claimants who obtain work through a hiring hall, are working part-time, are located out-of-state, have a recall date, are in approved training or are participating in work sharing.

(26) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: within 30 days after publication of the notice of proposed rulemaking in the *Pennsylvania Bulletin*
- B. The date or dates on which public meetings or hearings will be held:
- C. The expected date of promulgation of the proposed regulation as a final-form regulation:
- D. The expected effective date of the final-form regulation:
- E. The date by which compliance with the final-form regulation will be required: date of publication as a final regulation in the *Pennsylvania Bulletin*
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

(27) Provide the schedule for continual review of the regulation.

A sunset date is not be necessary for this proposed rulemaking, as the regulation will be monitored in the day-to-day administration of the Law.



pennsylvania

DEPARTMENT OF LABOR & INDUSTRY

OFFICE OF UNEMPLOYMENT COMPENSATION BENEFITS

Record of Job Applications and Work Search Activities

You may use this form each week to record your job applications and work search activities. Enter your name and Social Security Number on each sheet and provide the information requested. (See your UCP-1 booklet for information on the work search requirements.) Include additional information or additional pages if needed. Copies of this form are available for download at www.uc.pa.gov.

If you do not use this form, your work search record must contain all of the information that would be included on this form. Failure to keep a thorough and accurate work search record or failure to provide your record to the department upon request could result in liability to repay benefits you received.

Please note: Do not return your work search record to the department unless specifically requested.

Name: _____ Social Security Number:

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Week beginning Sunday : ____/____/____ through Saturday : ____/____/____

Job Applications & Work Search Activity		Date	Employer	Employer Contact Name and Phone Number	How Did You Apply For Work?	Results

Part 2: Work Search Activity		Date(s)	Description of Work Search Activity	PA CareerLink® Contact Name, if applicable	PA CareerLink® Location, if applicable

Exemption Information		Type of Exemption (Provide detail)	Contact Name and Phone Number for Verification (If applicable)

Name: _____ Social Security Number:

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Week beginning Sunday : ____/____/____ through Saturday : ____/____/____

Job Applications & Work Search Activity	Part 1 - Job Applications	Date	Employer	Employer Contact Name and Phone Number	How Did You Apply For Work?	Results
Part 2 - Work Search Activity	Date(s)	Description of Work Search Activity	PA CareerLink® Contact Name, if applicable	PA CareerLink® Location, if applicable		
Exemption Information	Type of Exemption (Provide detail)			Contact Name and Phone Number for Verification (If applicable)		

I certify that all information I have provided in this document is correct and complete. I acknowledge that false statements in this document are punishable pursuant to 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

First Name _____ Last Name _____ (print)

Signature _____ Date _____

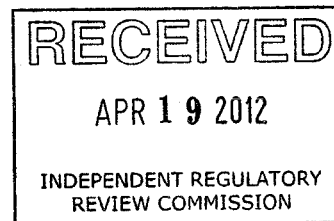
A person who knowingly makes a false statement or knowingly withholds information to obtain UC benefits commits a criminal offense under section 801 of the UC Law, 43 P.S. §871, and may be subject to a fine, imprisonment, restitution and loss of future benefits.

Remember! If you are working full time, you are not eligible for benefits for that week. If you are working part time, you must report all work performed and gross wages earned during weeks claimed. Payments will be matched against wages reported by employers to the Department of Labor & Industry.

*Auxiliary aids and services are available on request to individuals with disabilities.
Equal Opportunity Employer/Program*

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p><i>[Signature]</i></p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>APR 11 2012 DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p align="center">Department of Labor and Industry _____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. _____ 12-96</p> <p>DATE OF ADOPTION: _____</p> <p>BY: <i>[Signature]</i> Julia K. Hearthway</p> <p>TITLE: SECRETARY _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p><i>[Signature]</i> Megan L. Considine</p> <p>MAR 12 2012 DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING

TITLE 34. LABOR AND INDUSTRY

PART II, SUBPART A. UNEMPLOYMENT COMPENSATION

CHAPTER 65. EMPLOYE PROVISIONS

SUBCHAPTER B. PREREQUISITES FOR ELIGIBILITY

[REGISTRATION] ACTIVE SEARCH FOR WORK

SECTION 65.11 - [WORK REGISTRATION; EFFECTIVE PERIOD] ACTIVE SEARCH FOR WORK

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

34 PA. CODE CH 65

The Department of Labor and Industry ("Department"), proposes an amended regulation, as set forth in Annex A, for inclusion in Title 34. Labor and Industry, Part II, Subpart A. Unemployment Compensation, Chapter 65. Employee Provisions, Subpart B. Prerequisites for Eligibility.

A. Statutory Authority

This amended 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, and section 401(b) of the Law, 43 P.S. § 801(b) ("Section 401(b)"), which directs the Department to establish the requirements a claimant must meet in order to "make an active search for suitable employment."

B. Background and Description of Proposed Rulemaking

Section 401 of the Law, 43 P.S. § 801, contains various eligibility criteria for unemployment compensation ("UC") benefits. As amended by Act 6 of 2011¹, subsection (b) of section 401 provides that "[c]ompensation shall be payable to any employee who is or becomes unemployed, and who- ... (b) (1) [i]s making an active search for suitable employment."

The requirement in amended Section 401(b) that a claimant make an active search for suitable employment took effect on January 1, 2012, and applies to benefit years that begin on or after that date.²

This proposed rulemaking will amend 34 Pa. Code § 65.11 to contain the requirements a claimant must meet in order to be eligible for benefits under Section 401(b). This rulemaking is proposed in accordance with the General Assembly's directive in Section 401(b) that "[t]he requirements for 'active search' shall be established by the department..."

Under subsection (b) of the proposed regulation, a claimant's initial active search requirement is to register for employment search services in the Pennsylvania Careerlink® system within 30 days after the claimant files his application for benefits. Section 401(b)(1) provides that this requirement must be part of the Department's overall work search requirements. If the claimant fails to register within that 30 day period, he is ineligible for benefits for weeks that end beyond that 30 day period unless the claimant has registered no later than Sunday of the week.

¹ Act of June 17, 2011, P.L. 6, No. 6.

² See sections 9 and 11 of Act 6 of 2011.

In addition to the initial requirement to register for employment search services, generally a claimant must satisfy the requirements of subsection (d)(1), (2) and (4) during each week for which compensation is claimed, beginning with the third week of the benefit year. During the third through eighth weeks, Subsection (d)(1) requires the claimant to apply for at least two positions each week. However, the claimant may limit his applications to positions that would provide employment and wages similar to those the claimant had prior to his unemployment and are within a generally accepted commuting distance. During the ninth week of the benefit year and subsequent weeks, subsection (d)(2) requires the claimant to apply for not less than three positions each week that would provide "suitable employment" as defined in section 4(t) of the Law, 43 P.S. § 753(t). A claimant may apply for a position by mail, phone or electronic transmission, by submitting an application or resume to the employer, or by following a hiring procedure established by the employer.

Subsection (d)(4) enumerates seven types of job search activities other than applying directly to an employer for a position. Generally, a claimant must engage in at least one of these activities during each week. If a claimant applies in a week for more than the number of positions required under subsection (d)(1) or (2), the additional application may substitute for a work search activity pursuant to subsection (d)(5).

There are certain exceptions and alternative requirements under subsection (e) of the regulation. Notwithstanding the registration requirement in subsection (b) and the weekly work search activities required under subsection (d), the Department may determine that a claimant has satisfied the active search requirement in Section 401(b) if the claimant engages in work search efforts that are comparable to the way in which jobs in the claimant's trade or occupation are found in the claimant's community and labor market. Work search activities under subsection (d) are not required for a week if the claimant is a member of a union that has a hiring hall or the claimant is registered with a hiring hall, the claimant is required to obtain employment through the hiring hall, and the claimant fulfills all requirements to maintain eligibility for referral by the hiring hall during the week. Work search activities under subsection (d) also are not required for a week if the claimant actively participates during the week in a program or activity that is approved by the Department as an acceptable work search alternative. If the claimant works part time during a week and earns in excess of the partial benefit credit under section 4(m.3) of the Law, 43 P.S. § 753(m.3), the claimant will satisfy subsection (d)(1) by applying for one position and subsection (d)(2) by applying for two positions, and the claimant is not required to satisfy subsection (d)(4) for the week. If a claimant's labor market is located outside of Pennsylvania, the claimant must register for employment search services with the employment service that serves the claimant's labor market in addition to registering with the Pennsylvania Careerlink® system.

Pursuant to subsection (f) of the regulation, the active search requirement does not apply to any week in which the claimant is in training with the approval of the Secretary of Labor and Industry or any week in which the claimant is participating in work sharing. The exception for weeks in which the claimant is in approved training is required by section 3304(a)(8) of the Federal Unemployment Tax Act, 26 U.S.C. § 3304(a)(8).

Section 401(b)(5) provides that the active search requirement is not applicable to a claimant who is laid off for lack of work and is advised by his employer of the date when he will return to work. Subsection (f)(2) of the regulation articulates certain criteria to determine if a claimant has been given a return-to-work date for purposes of Section 401(b)(5), and specifies certain circumstances when Section 401(b)(5) would not apply.

For purposes of eligibility for extended benefits, subsection (g) of the regulation states that a claimant must satisfy any work search requirements for such benefits in addition to meeting the requirements of Section 401(b) and this regulation.

C. Affected Persons

This regulation would affect all claimants who file an application for UC benefits that takes effect on or after January 1, 2012.

D. Fiscal Impact

The Department anticipates that a claimant will be able to meet the active search requirement in Section 401(b) and this regulation at minimal or no cost.

The Department will integrate administration of the active search requirement into its day-to-day administration of all of the eligibility provisions of the Law. It is not possible to accurately isolate the cost to administer only the active search provision.

E. Paperwork Requirements

Subsection (c) of the regulation requires a claimant to create a record of his work search activities that contains all information required by the Department, retain the record for two years from the effective date of the application for benefits, and produce the record for the Department's review at such times and in such format and manner as the Department requires.

F. Sunset Date

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

G. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

H. 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 4/19/12 to the Independent Regulatory Review Commission (IRRC) and the Senate Labor and Industry Committee and House Labor and Industry Committee (Committees). In addition, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

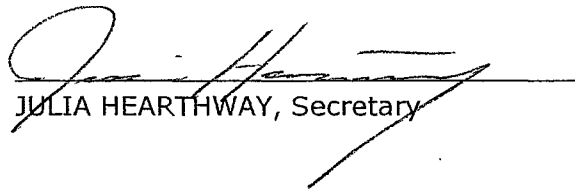
Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed regulation, it will notify the Department within 10 days after the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that 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.

I. Public Comment

Interested parties are invited to submit written comments, objections or suggestions about the proposed regulation to Susann Morrison, Executive Assistant to the Deputy Secretary for UC Programs, Room 1721B, Labor and Industry Building, 651 Boas Street, 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 sumorrison@pa.gov. 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 Ms. Morrison at (717) 705 - 3799.


JULIA HEATHWAY, Secretary

Annex A
TITLE 34. LABOR AND INDUSTRY
PART II, SUBPART A. UNEMPLOYMENT COMPENSATION
CHAPTER 65. EMPLOYE PROVISIONS
SUBCHAPTER B. PREREQUISITES FOR ELIGIBILITY
[Registration] Active Search for Work

§ 65.11. [Work registration; effective period] Active search for work.

(a) [A claimant who files an application for benefits in accordance with § 65.41 (relating to filing methods) and declares his availability for suitable work has registered for work for purposes of section 401(b) of the law (43 P. S. § 801(b)). The work registration is effective on the date that the application is effective in accordance with § 65.42 (relating to application for benefits—effective date) or § 65.43a (relating to extended filing) and remains in effect for the benefit year corresponding to the application and any subsequent period for which benefits are payable pursuant to the application.

(b)] Initial procedures. When a claimant files an application for benefits in accordance with § 65.41, the department will provide [information relevant to the claimant's reemployment and receipt of employment services to the employment office] information to the claimant regarding the process to register for employment search services and post a resume in the Pennsylvania CareerLink® system, and advise the claimant of services provided by the department and the Pennsylvania CareerLink® system.

(b) Work registration. A claimant shall register for employment search services in the Pennsylvania CareerLink® system within thirty (30) days after the claimant files his application for benefits. If a claimant does not register for employment search services in the Pennsylvania CareerLink® system within thirty (30) days after the claimant files his application for benefits the claimant shall be ineligible for compensation for any week that ends more than thirty (30) days after the claimant files his application for benefits unless the claimant has registered no later than Sunday of that week.

(c) Weekly requirements. In order to be eligible for compensation for the third consecutive week of the benefit year and each week thereafter a claimant shall:

(1) engage in work search activities during the week in accordance with subsections (d) and (e),

(2) create a record of his work search activities during the week, containing all information required by the department,

(3) retain the record for a period of two years from the effective date of the application for benefits, and

(4) produce the record for the department's review at such times and in such format and manner as required by the department.

(d) Weekly work search activities

(1) During each week from the third consecutive week of the benefit year through the eighth consecutive week of the benefit year, the claimant shall apply for employment as follows:

(i) Except as provided in subparagraph (ii), the claimant shall apply for at least two positions.

(ii) The claimant may limit his applications to positions that would provide employment and wages similar to those the claimant had prior to his unemployment and are within a 45 minute commuting distance or a commuting distance that is generally accepted in the claimant's labor market, whichever is greater.

(2) During the ninth consecutive week of the benefit year and each week thereafter, the claimant shall apply for employment as follows:

(i) The claimant shall apply for at least three positions that would provide suitable employment under section 4(t) of the law.

(ii) The claimant may not limit his applications to positions described in paragraph (1)(ii) if doing so would result in an insufficient number of applications during the week.

(3) (i) For purposes of paragraphs (1) and (2), a claimant may apply for a position by expressing an interest in employment to the employer in person, or by mail, phone or electronic transmission, by submitting a job application or resume to the employer, or by following a hiring procedure established by the employer.

(ii) A repeated application for the same position will not satisfy the requirements of paragraphs (1) and (2) unless there is a reasonable basis to believe that the employer's hiring circumstances have changed.

(4) In addition to the requirements of paragraphs (1) and (2), the claimant shall do at least one of the following during the week:

(i) attend a job fair.

(ii) search positions posted on the Pennsylvania CareerLink® system or internet job banks.

(iii) post a resume in the Pennsylvania CareerLink® system or other resume posting service.

(iv) contact colleagues, former co-workers or other individuals in similar professions or occupations, to make known the claimant's availability for employment or obtain information about available positions, prospective employers or other employment opportunities.

(v) utilize an employment agency, employment registry or school placement service.

(vi) take a civil service test or other pre employment test.

(vii) participate in a program or activity offered through the Pennsylvania CareerLink® system.

(5) If a claimant applies for more than the minimum number of positions under paragraph (1) or (2), the additional application may substitute for a work search activity under paragraph (4).

(e) Alternative requirements.

(1) No work search activities under subsection (d) shall be required for a week if any of the following apply:

(i) The claimant -

(A) is a member of a union that has a hiring hall or the claimant is registered with a hiring hall,

(B) is required to obtain employment through the hiring hall, and

(C) fulfills all requirements to maintain eligibility for referral by the hiring hall during the week.

(ii) The claimant actively participates during the week in a program or activity approved by the department as an acceptable work search alternative.

(2) If a claimant works part time during a week and earns in excess of the claimant's partial benefit credit as defined in section 4(m.3) of the law, the following shall apply:

(i) The claimant will satisfy the requirements of subsection (d)(1) by applying for one position during the week and subsection (d)(2) by applying for two positions during the week.

(ii) the claimant will not be required to satisfy the requirement of subsection (d)(4) during the week.

(3) For purposes of subsection (b), if a claimant's labor market is located outside of Pennsylvania the claimant shall register for employment search services with the employment service that serves the claimant's labor market in addition to registering with the Pennsylvania CareerLink® system.

(4) Notwithstanding any other provision of this section, the department may determine that a claimant has satisfied the requirements of section 401(b) of the law if the claimant's work search efforts include actions comparable to traditional actions in the claimant's trade or occupation by which jobs have been found by others in the community and labor market in which the claimant is seeking employment.

(f) Applicability.

(1) This section does not apply as provided in section 401(b)(4) and (5) of the law or to any week in which a claimant is in training with the approval of the Secretary or any week in which a claimant is participating in a work sharing plan under Article XIII of the law.

(2) For purposes of section 401(b)(5) of the law:

(i) A claimant is advised by the employer of the date on which he will return to work only if both of the following conditions are satisfied:

(A) The employer designates a specific recall date and notifies the claimant of the recall date in writing.

(B) The employer's designation of a recall date is bona fide.

(ii) Section 401(b)(5) of the law shall not apply to any week following the week in which any of the following occur:

(A) The designated recall date is rescinded by the employer or is rescinded in fact.

(B) The designated recall date has passed.

(g) *Extended benefits.* For purposes of extended benefits under Article IV-A of the law, if the eligibility requirements for extended benefits include work search requirements in addition to the requirements of section 401(b) of the law and this section, the claimant also shall satisfy the additional work search requirements applicable to extended benefits.

(h) *Definitions.* For purposes of this section and section 401(b) of the law, the following words and phrases shall have the meaning indicated below:

(1) "Employment service" means the state employment service established under 20 CFR Part 652.

(2) "Pennsylvania CareerLink® system" means the system of offices, personnel and resources, including the Commonwealth Workforce Development System or successor electronic resources, through which the department provides services under the Wagner-Peyser Act, 29 U.S.C. § 49 et seq., and the Workforce Investment Act of 1998, 29 U.S.C. § 2801 et seq., or similar or successor statutes.

(3) "Register for employment search services" means provide information regarding education, work history and qualifications and any other information required by the department that is relevant to receipt of employment search services.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
HARRISBURG, PENNSYLVANIA 17120

THE SECRETARY

April 19, 2012

The Honorable Silvan B. Lutkewitte, III
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Notice of Proposed Rulemaking
Title 34 Labor & Industry
Part II, Subpart A. Unemployment Compensation
Chapter 65. Employee Provisions
Document No. 12-96

Dear Chairman Lutkewitte:

Enclosed is a proposed rulemaking package consisting of a Face Sheet, Preamble, Annex A and Regulatory Analysis Form.

The Department of Labor & Industry is submitting this rulemaking consistent with Section 401(b) of the Unemployment Compensation (UC) Law, as amended by Act 6 of 2011. Section 401(b) requires UC claimants to make an active search for suitable employment and instructs the Department to establish the requirements for "active search."

Comments, suggestions or questions should be directed to Sean F. Creegan, Deputy Chief Counsel, Office of Chief Counsel, Department of Labor & Industry, 10th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; Telephone: (717) 787-4186; Fax: (717) 787-1303. The email address is: screegan@pa.gov.

The Department's staff will provide your staff with any assistance required to facilitate your review of this proposal.

Sincerely,

Julia Hearthway
Secretary

cc w/encl: Arthur F. McNulty, Chief Counsel
Gregg Shore, Deputy Secretary for UC Programs
David Greineder, Director of Legislative Affairs
Gwenn Dando, Executive Policy Specialist, Office of Policy, Planning & Development
Michael Vovakes, Special Assistant to the Secretary
Susann Morrison, Executive Assistant to Deputy Secretary for UC Programs
Sean F. Creegan, Deputy Chief Counsel, UC Division
Kenneth Wright, Assistant Director, Office of UC Benefits Policy

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

I.D. NUMBER: 12-96

SUBJECT: ACTIVE SEARCH FOR WORK

AGENCY: DEPARTMENT OF LABOR AND INDUSTRY

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

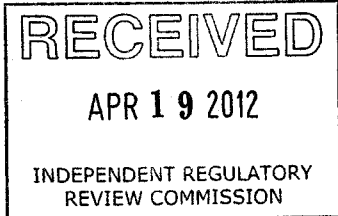
120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions



FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON LABOR RELATIONS

MAJORITY CHAIRMAN Ron Miller

MINORITY CHAIRMAN William R. Keller

SENATE COMMITTEE ON LABOR RELATIONS

MAJORITY CHAIRMAN John R. Gordner

MINORITY CHAIRMAN Christine M. Tartaglione

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

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4-19-12 Will Keller

4/19/12 Vanda K. Lutz

4/19/12 Elizabeth A. Ly

4/19/12 J. F. J.

4/19/12 Samanta Hussein