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<b>Regulatory Analysis Form</b> (Completed by Promulgating Agency)	<b>INDEPENDENT REGULATORY REVIEW COMMISSION</b>						
(All Comments submitted on this regulation will appear on IRRC's website)	NOV - 5 PM 12: 19						
(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): <table border="0"><tr><td><input type="checkbox"/> Proposed Regulation</td><td><input type="checkbox"/> Emergency Certification Regulation;</td></tr><tr><td><input checked="" type="checkbox"/> Final Regulation</td><td><input type="checkbox"/> Certification by the Governor</td></tr><tr><td><input type="checkbox"/> Final Omitted Regulation</td><td><input type="checkbox"/> Certification by the Attorney General</td></tr></table>		<input type="checkbox"/> Proposed Regulation	<input type="checkbox"/> Emergency Certification Regulation;	<input checked="" type="checkbox"/> Final Regulation	<input type="checkbox"/> Certification by the Governor	<input type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> Certification by the Attorney General
<input type="checkbox"/> Proposed Regulation	<input type="checkbox"/> Emergency Certification Regulation;						
<input checked="" type="checkbox"/> Final Regulation	<input type="checkbox"/> Certification by the Governor						
<input type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> Certification by the Attorney General						
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)  Section 401 of the Unemployment Compensation Law ("Law"), 43 P.S. § 801, contains various eligibility criteria for unemployment compensation ("UC") benefits. As amended by the Act of June 17, 2011, P.L.6, No. 6 ("Act 6"), 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)").							
(8) State the statutory authority for the regulation. Include specific statutory citation.  This 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."							
(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.

This 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 ..."

If the General Assembly had not amended Section 401(b) in Act 6 to include a work search requirement, such legislation would have become necessary as a result of a change to federal law. Section 303(a)(12) of the Social Security Act, 42 U.S.C. § 503(a)(12), supplied by section 2101 of the Act of February 22, 2012, P.L. 112-96, provides that each State must require an active search for work as a UC eligibility criterion.

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

The regulation serves the public interest in that UC work search requirements shorten the duration of unemployment.<sup>1</sup> This benefits the claimant community, by returning them to work sooner, the UC Fund, by reducing UC benefit costs by an estimated \$24 million per year, and the employer and employee taxpayers that contribute to the UC Fund.

(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.

There are references to data that supports the regulation in this Regulatory Analysis Form and the Preamble. However, the determining factor is that the regulation is required by law. Section 401(b) explicitly requires the Department to establish the requirements that must be met in order to satisfy the work search provision. Moreover, subsequent to Act 6 federal law was amended to mandate a work search requirement. Section 303(a)(12) of the Social Security Act, 42 U.S.C. § 503(a)(12), supplied by section 2101 of Act of February 22, 2012, P.L. 112-96, provides that each State must require an active search for work as a UC eligibility criterion.

<sup>1</sup> O'Leary, Christopher J., and Stephen A. Wandner. 2005. "Do Job Search Rules and Reemployment Services Reduce Insured Unemployment?" Upjohn Institute Working Paper No. 05-112. Kalamazoo, MI: W. E. Upjohn Institute for Employment Research. [http://research.upjohn.org/up\\_workingpapers/112](http://research.upjohn.org/up_workingpapers/112)

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

This rulemaking will apply only to claimants who file an application for UC benefits that takes effect on or after January 1, 2012. It will not apply to claimants who qualify for one or more of the exceptions in the regulation.

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.

(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 rulemaking requires a claimant to register for employment search services with the Pennsylvania CareerLink® system. This can be done online. Subsections (e)(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 (e)(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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government (UC Fund)</b>	\$12 million	\$24 million	\$24 million	\$24 million	\$24 million	\$24 million
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>	Administrative costs cannot be estimated.					
<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>						

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

<b>Program</b>	<b>FY -3 October, 2008 – September, 2009</b>	<b>FY -2 October, 2009 – September, 2010</b>	<b>FY -1 October, 2010 – September, 2011</b>	<b>Most Recent FY October, 2011 – September, 2012</b>
Unemployment Compensation program – regular, state funded UC	\$4, 862,371,012	\$4,124,389,500	\$3,222,416,863	\$2,930,941,667
Unemployment Compensation program – federally funded Emergency Unemployment Compensation (EUC)	\$1,971,808,571	\$4,178,765,879	\$3,020,070,736	\$2,148,490,884
Unemployment Compensation program – federally funded Extended Benefits (EB)	\$286,505,423	\$397,461,705	\$645,790,682	\$308,314,096

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

Costs: As indicated in number (16), it is not possible to accurately isolate the cost to administer only the active search provision from the overall cost of administering all of the eligibility requirements for UC.

With regard to claimants, as explained in number (15), claimants should incur minimal or no costs to comply with the regulation.

Benefits: The regulation brings the UC program into compliance with Section 401(b) and federal law and, as indicated in number (10), is expected to shorten the duration of unemployment. This is beneficial to claimants and will save the UC Fund and estimated \$24 million per year.

(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 rulemaking is required by law, public input was not sought prior to publication of the notice of proposed rulemaking. In response to the notice of proposed rulemaking the Department received comments from the Independent Regulatory Review Commission, Representative William F. Keller, Community Legal Services, the Pennsylvania Chamber of Business and Industry and the Manufacturers' Association of South Central Pennsylvania.

(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.

When drafting the regulation, the Department began with the minimum work search requirements specified by the General Assembly in Section 401(b). From there, the Department used its best judgment to craft a regulation that would not impose burdensome requirements but at the same time would establish 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, when Act 6 was enacted federal law did not contain an active work search requirement. However, all other states already had this requirement and imposed their individual standards. As explained in number (9), federal law was recently amended to require an active search for work by individuals claiming regular UC.

Other UC programs are federally funded in whole or in part. Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-service members (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.<sup>2</sup> 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.

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

Prior to Act 6, 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 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 beginning with the third week of the benefit year for which compensation is claimed. During the third through the eighth week for which benefits are claimed, 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 45 minute commuting distance. During the ninth week of the benefit year for which benefits are claimed 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.

<sup>2</sup> Pursuant to the American Recovery and Reinvestment Act of 2009, EB was 100% federally funded for a period of time in response to the recent recession.

(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 (d) of the 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 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: N/A
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: upon approval by IRRC and the Attorney General
- D. The expected effective date of the final-form regulation: date of publication in the Pennsylvania Bulletin
- E. The date by which compliance with the final-form regulation will be required: effective date
- 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 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](http://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:

Week beginning Sunday  through Saturday :   
(format MM/DD/YYYY)

		Date	Employer	Employer Contact Name and Phone Number	How Did You Apply For Work?	Results
Job Applications & Work Search Activity	Part 1 - Job Applications					
Job Applications & Work Search Activity	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:

Week beginning Sunday :  through Saturday :

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

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*

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Copy below is hereby approved as to  
form and legality. Attorney General

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
DATE OF APPROVAL

☐ 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 and Industry

\_\_\_\_\_  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 12-96

DATE OF ADOPTION: \_\_\_\_\_

BY: Julia K. Hearthway

TITLE: SECRETARY

\_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form  
and legality. Executive or Independent Agencies.

*[Signature]*  
BY: SHAWN E. SMITH

**NOV 02 2012**

\_\_\_\_\_  
DATE OF APPROVAL

(Deputy General Counsel)

☐ Check if applicable. No Attorney General  
approval or objection within 30 days after  
submission.

**FINAL-FORM RULEMAKING**

**TITLE 34. LABOR AND INDUSTRY**

**PART II, SUBPART A. UNEMPLOYMENT COMPENSATION**

**CHAPTER 65. EMPLOYEE PROVISIONS**

**SUBCHAPTER B. PREREQUISITES FOR ELIGIBILITY**

**[REGISTRATION] ACTIVE SEARCH FOR WORK**

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

## **FINAL-FORM RULEMAKING**

### **Title 34 – Labor and Industry**

#### **DEPARTMENT OF LABOR AND INDUSTRY**

##### **[34 PA. CODE CH 65]**

##### **Unemployment Compensation; Employee Provisions**

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

#### **A. Statutory Authority**

This final-form rulemaking is promulgated 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 the Rulemaking**

Section 401 of the Law, 43 P.S. § 801, contains various eligibility criteria for unemployment compensation ("UC") benefits. As amended by the Act of June 17, 2011, P.L. 6, No. 6 ("Act 6"), 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.<sup>1</sup>

This rulemaking will amend 34 Pa. Code § 65.11 to contain the requirements that a claimant must meet in order to be eligible for benefits under Section 401(b). This rulemaking is 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..."

Under subsection (c) of the regulation, a claimant's initial active search requirement is to register for employment search services in the Pennsylvania CareerLink® system within 30

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<sup>1</sup> See sections 9 and 11 of Act 6 of 2011.

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 each week that ends beyond that 30 day period unless the claimant has registered no later than Sunday of the week.

In addition to the initial requirement to register for employment search services, generally a claimant must satisfy the requirements of subsection (e)(1), (2) and (4) for each week of the benefit year for which a claim for compensation is filed ("claim week"), beginning with the third claim week. During the third through the eighth claim week, subsection (e)(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 ("similar positions") and are within a 45 minute commuting distance. During the ninth claim week and subsequent weeks, subsection (e)(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). The regulation allows the claimant to continue to limit his job search to similar positions within a 45 minute commute, as long as adhering to that limitation will not result in less than three job applications per week. The claimant is required to expand the scope of his job search beyond similar positions within a 45 minute commute to include other positions that would provide suitable employment if, and to the extent that, doing so is necessary in order to apply for at least three positions per week. 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 (e)(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 (e)(1) or (2), the additional application may substitute for a work search activity pursuant to subsection (e)(5).

There are certain exceptions and alternative requirements under subsection (f) of the regulation. Notwithstanding the registration requirement in subsection (c) and the weekly work search activities required under subsection (e), 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 (e) 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 (e) 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 (e)(1) by applying for one position and subsection (e)(2) by applying for two positions, and the claimant is not required to satisfy subsection (e)(4) for the week. If a claimant is interviewed for a position, the interview may substitute for an application for a position for purposes of subsection (e)(1) and (2) or may substitute for a work search activity for purposes of subsection (e)(4). 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 (g) 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 (g)(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 (h) 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. Comments**

The notice of proposed rulemaking was published on May 5, 2012. 42 Pa. B. 2378. The Department received comments from the Independent Regulatory Review Commission ("IRRC"), Representative William F. Keller ("Representative Keller"), Community Legal Services ("CLS"), the Pennsylvania Chamber of Business and Industry ("Chamber") and the Manufacturers' Association of South Central Pennsylvania ("MASCP").

*Comment:* Representative Keller commented that the regulation should provide instructions on the process to register for employment search services with the Pennsylvania CareerLink®, and that the claimant will receive a confirmation when the registration is completed.

*Response:* It would not be advisable to include instructions on the current registration process in the regulation. Information technology is evolving continuously and the systems and methods used to register for employment search services may change over time. When such changes occur, instructions on the current process would be obsolete. However, the final form regulation has been amended to state that the Department will provide instructions on the process when a claimant files an application for benefits.

The Department recently implemented a new internet registration system, "JobGateway<sup>SM</sup>," which provides a printable confirmation screen to the claimant when the registration for employment search services is completed.

*Comment:* Representative Keller stated that the regulation should indicate that the Department will advise claimants of the recommended work search record form and provide the form to claimants. IRRC recommended that the regulation identify how claimants can access the form.

*Response:* The Department has incorporated these suggestions into the final-form regulation.

*Comment:* Representative Keller stated that the regulation should indicate that use of the recommended work search record form is not mandatory.

*Response:* The Department has incorporated this suggestion into the final-form regulation. The final-form regulation provides that a claimant may use the work search record form recommended by the Department, or use another format as long as the same information is recorded.

*Comment:* IRRC stated that the regulation should indicate under what circumstances, and in what format, the Department would request a claimant's work search record.

*Response:* The burden to prove that a claimant has met the eligibility requirements of the Law rests with the claimant. *Schaal v. Unemployment Compensation Board of Review*, 870 A.2d 952 (Pa. Cmwlth. 2005). Therefore, a claimant must be able to establish that he or she searched for work while claiming UC benefits. Moreover, Section 501(c)(1) of the Law, 43 P.S. § 821(c)(1), requires the Department to examine each claim for compensation to determine if the claimant is eligible for benefits. The Department does not agree that the regulation should indicate the circumstances in which it would request a claimant's work search record. Such an enumeration could be interpreted as a limitation on the claimant's responsibility to establish eligibility, the Department's authority to examine claims, or both. Moreover, the circumstances in which the Department would seek a claimant's work search record likely will change over time, based on the Department's experience administering the work search requirement and technological changes to the way UC claims are submitted.

*Comment:* The effective date of an application for UC benefits begins a 52 week period known as the "benefit year." Section 4(b) of the Law, 43 P.S. § 753(b). The regulation would require a claimant to retain his or her work search records for the two year period beginning on the effective date of the application. In other words, work search records must be retained for the duration of the benefit year plus the one year period following the benefit year. Representative Keller stated that the retention period should be limited to the benefit year. IRRC stated that the Department should explain why the two year retention period is appropriate.



*Response:* A requirement that work search records be retained only until the end of the benefit year would be inadequate. Work search records would be needed in connection with a review of the claimant's compliance with the work search requirements, or if an issue arose regarding the claimant's eligibility for benefits in relation to those requirements. The need to review work search records in these circumstances could occur beyond the end of the benefit year. Similarly, if a claim for compensation is included among sample claims reviewed under the Benefit Accuracy Measurement program, work search records could be needed after the benefit year has ended. During periods of high unemployment when Extended Benefits (EB) or federal benefit programs are in effect, compensation may be paid for weeks subsequent to the benefit year. The requirement to retain work search records should be no less applicable to such weeks. Lastly, a requirement to maintain records for as much as two years is not unusual. Records relating to federal income tax, for example, must be retained for a minimum of three years after the tax return is filed. See *IRS Publication 552*, [www.irs.gov/pub/irs-pdf/p552.pdf](http://www.irs.gov/pub/irs-pdf/p552.pdf).

*Comment:* The proposed regulation establishes work search requirements for the third consecutive week of the benefit year through the eighth consecutive week of the benefit year, and potentially more expansive requirements for the ninth consecutive week of the benefit year and subsequent weeks. CLS commented that the transition from the requirements for early weeks to the requirements for later weeks should occur after eight consecutive weeks of unemployment, and that the count of weeks should be reset at zero if the claimant returns to work during the benefit year. IRRC asked the Department to clarify why the transition from the early requirements to the later requirements is based on consecutive weeks of the benefit year rather than the number of consecutive weeks the claimant is unemployed.

*Response:* The Department has accepted CLS' suggestion in part. In the final-form regulation, the transition to the requirements for the later weeks occurs after the eighth week "of the benefit year for which a claim for compensation is filed." The transition is based on claim weeks, rather than weeks of unemployment as advocated by CLS, because the Department is only aware of weeks of unemployment for which claims are filed. Also, the count of claim weeks is not reset at zero if the claimant returns to work. This approach could cause claimants to switch back and forth between the different requirements throughout the benefit year. As a result the requirements would be difficult to administer and could be confusing to claimants.

*Comment:* Based upon the comments received, it appears that the description in the proposed regulation of the work search requirements for the third through the eighth claim week and the requirements for the ninth and subsequent claim weeks, and the extent to which those requirements differ, may not be clear.

*Response:* The Department has modified the language of subsections (e)(1) and (2) in the final-form regulation in an effort to more clearly describe the weekly work search requirements.

From the third claim week through the eighth claim week, a claimant must apply for at least two positions per week. Notwithstanding the requirement to apply for not less than two

positions per week, during these weeks the regulation allows a claimant to limit his job applications to similar positions that are within a 45 minute commuting distance. For the ninth claim week and subsequent claim weeks, a claimant is required to apply for at least three positions each week. The regulation allows the claimant to continue to limit his job search to similar positions within a 45 minute commute, as long as adhering to that limitation will not result in less than three job applications per week. The claimant is required to expand the scope of his job search beyond similar positions within a 45 minute commute to include other positions that would provide suitable employment under section 4(t) of the Law, 43 P.S. § 753(t), if, and to the extent that, doing so is necessary in order to apply for at least three positions per week.

*Comment:* Section 401(b) of the Law provides that -

The requirements for "active search" shall be established by the department and shall include, at a minimum, all of the following:

\* \* \*

(iii) Applying for positions that offer employment and wages similar to those the claimant had prior to his unemployment and which are within a forty-five (45) minute commuting distance.

Representative Keller and CLS assert that for the entire benefit year Section 401(b) requires only that a claimant apply for similar positions that are within a 45 minute commute and that the Department lacks authority to impose a requirement to apply for a broader scope of positions after the eighth claim week, if that is necessary in order to apply for three positions per week.

*Response:* Representative Keller's and CLS' comments are not supported by the language of Section 401(b). Section 401(b) clearly indicates that the requirement to apply for similar positions that are within a 45 minute commute is a "minimum" requirement. Also, Section 401(b) explicitly requires the Department to establish the requirements a claimant must meet to satisfy the work search provision. Therefore, the Department is authorized to expand upon the minimum statutory requirement after the eighth claim week.

Pursuant to section 401(d)(1) of the Law, 43 P.S. § 801(d)(1), a claimant must be "able to work and available for suitable work" in order to be eligible for benefits. If a claimant reaches a point in his benefit year where he has applied for all similar positions that may be available and he is not available for employment in a broader scope of positions within the bounds of suitable work, then the claimant has rendered himself ineligible under section 401(d)(1).

*Comment:* Section 401(b)(1) provides that the active search for work requirements established by the Department shall include, "at a minimum, ... [a]pplying for positions ... which are within a forty-five (45) minute commuting distance." For the third claim week through the eighth claim week, the proposed regulation would allow claimants to limit job applications to "positions within a 45 minute commuting distance or a distance that is generally accepted in the claimant's labor market, whichever is greater" (emphasis added).

IRRC asked why the Department expanded upon the statute. IRRC also asked the Department to explain how a claimant would know what is a generally accepted commuting distance. The Chamber stated that a "generally accepted" commuting distance lacks specificity and could allow this provision in the regulation to be circumvented

*Response:* In the final-form regulation, the Department has omitted the reference to a commuting distance "that is generally accepted in the claimant's labor market."

*Comment:* From the third claim week through the eighth claim week, a claimant may limit his job applications to similar positions. Beginning with the ninth claim week, a claimant may have to expand the scope of the positions for which he will apply if that is necessary to apply for at least three positions each week. IRRC commented that the Department should explain how it determined that the period of time from the third claim week through the eighth claim week affords claimants sufficient time to search for a job within their field before the requirements for the ninth and subsequent claim weeks become applicable. In a similar comment IRRC stated that the Department should explain how it determined that nine weeks is the appropriate benchmark for expanding the job search requirements.

*Response:* The definition of "suitable work" in section 4(t) of the Law, 43 P.S. § 753(t), provides that one of the factors to be considered in determining if work is suitable is "the length of time [the claimant] has been unemployed ..." When applying this factor, the Pennsylvania Supreme Court has stated that a claimant must have a "reasonable opportunity" to obtain employment commensurate with the claimant's training and experience. *UCBR v. Franklin and Lindsey, Inc.* 497 Pa. 2, 4-5, 438 A.2d 590, 591 (1981). However, a reasonable opportunity is not an indefinite opportunity. "We think the most important factor in this type of case is the length of time that the claimant has been unemployed. A claimant's particularity for desired employment must decrease as his length of unemployment increases." *Donnelly v. UCBR*, 330 A.2d 544, 547 (Pa. Cmwlth. 1975).

In cases where the claimant had been unemployed only a short period of time, the courts have found work that differed from their previous employment with regard to job skills or wages to be unsuitable. *Franklin and Lindsey, supra* (five days), *Department of Education v. UCBR*, 890 A.2d 1232 (Pa. Cmwlth. 2006) (two weeks), *Ellwood City Hospital v. UCBR*, 457 A.2d 231 (Pa. Cmwlth. 1983) (one week), *United States Steel Corporation v. UCBR*, 310 A.2d 94 (Pa. Cmwlth. 1973) (six days).

However, in cases where the claimant was unemployed eight weeks or more when he refused an offer of work that was different than the claimant's previous employment or provided lesser wages, the courts have found the offered employment to be suitable. *Rising v. UCBR*, 621 A. 2d 1152 (Pa. Cmwlth. 1993) (two months), *Rich v. UCBR*, 479 A.2d 668 (Pa. Cmwlth. 1984) (eight weeks), *Jenkins v. UCBR*, 410 A.2d 980 (Pa. Cmwlth. 1980) (two months), *Donnelly, supra* (three and one-half months), *Neff Unemployment Compensation Case*, 169 A.2d 338 (Pa. Super. 1961) (eight weeks), *Cicerella Unemployment Compensation Case*, 137 A.2d 853 (Pa. Super. 1957) (three months).

To the extent that the regulation requires a claimant to expand the scope of the positions for which he will apply after claiming eight weeks of benefits, the regulation is consistent with case law on "suitable work."

*Comment:* Section 401(b)(6) provides that "[t]he department may waive or alter the requirements of this subsection in cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or which would be inconsistent with the purposes of this act." Representative Keller, CLS and IRRC stated that this waiver provision should be integrated into the regulation. Representative Keller and IRRC indicated that the regulation should include the criteria to qualify for a waiver. Representative Keller stated that the regulation should include the process to request a waiver.

*Response:* The Department has incorporated the waiver provision into the final-form regulation.

Section 401(b)(6) specifies the criteria for a waiver: if "compliance with [the work search] requirements would be oppressive or ... inconsistent with the purposes of this act." By incorporating the waiver provision into the regulation, the criteria for a waiver also have been included.

Determining whether a given claimant's compliance with the work search requirement would be oppressive or inconsistent with the Law will be based on the facts and circumstances surrounding that particular claimant and, possibly, particular weeks for which claims are filed. It is a fact specific and claimant specific determination. For this reason, it is not possible to include in the regulation a definitive list of "cases or situations" when the waiver provision would apply. Moreover, such a list could be interpreted to limit the circumstances when the Department may grant a waiver.

The Department has implemented Representative Keller's suggestion. The final-form regulation includes a reference to the process to request a waiver.

*Comment:* Representative Keller stated that the regulation should provide an exception to the work search requirements or modified requirements for claimants with a disability or work limitation. To the extent that the requirements of the regulation might result in unreasonable or impractical consequences, IRRC indicated that the regulation should clarify how such situations would be addressed.

*Response:* The circumstances described in these comments can be addressed through the waiver provision in the Law and the regulation.

*Comment:* IRRC asked the Department to provide data that establishes the number of weeks a claimant normally is unemployed when they begin to apply for jobs outside of their chosen line of work, data regarding the average number of weeks a claimant is unemployed and the typical number of positions applied for during that time period, and data that indicates the average amount of time it takes claimants to find jobs within their field.

*Response:* The average duration of a Pennsylvania unemployment compensation claim was 18.7 weeks in 2011.

The Department does not have the other items of data specifically requested by IRR. However, the Department has related information. . Based on data derived by the Bureau of Labor Statistics (BLS) from the Current Population Survey, among individuals who became unemployed and subsequently became employed again the median duration of their unemployment was 10.0 weeks in 2011. Moreover, BLS determined that "the chance of becoming employed decreases the longer one is unemployed. ... In 2011, an individual who had been unemployed for less than 5 weeks had a 31-percent chance of becoming employed in a subsequent month, whereas an individual who had been jobless for half a year or longer had only a 10-percent chance." Ilg, Randy E., and Elini Theodossiou. 2012. "Job search of the unemployed by duration of unemployment." Monthly Labor Review, March, 2012, Vol. 135, No. 3, Bureau of Labor Statistics, [www.bls.gov/mlr/2012/03/home.htm](http://www.bls.gov/mlr/2012/03/home.htm).

This data supports the regulation. A claimant who has not found a new job after claiming benefits for 8 weeks is approaching the point in time when half of the unemployed individuals who successfully find reemployment have already done so. Also, the claimant's likelihood of reemployment will decrease the longer he remains unemployed. The regulation reasonably requires such a claimant to increase the number of weekly job applications and, if necessary to make the required number of applications, expand the scope of positions for which he will apply.

*Comment:* CLS asserts that the regulation should provide for an individualized assessment of each claimant's circumstances to determine when the claimant will be required to expand his job search beyond similar positions within a 45 minute commute, if that is necessary to apply for not less than three positions per week.

*Response:* Under section 402(a) of the Law, 43 P.S. § 802(b), a claimant is ineligible for benefits if he refuses an offer of "suitable work" without good cause. Pursuant to Section 402(b) of the Law, a claimant is ineligible for benefits if he voluntarily leaves work without cause of a necessitous and compelling nature. When determining if the claimant had a necessitous and compelling reason to leave his job, Section 402(b) instructs the Department to consider whether the job was "suitable work."

Sections 402(a) and (b) apply only to claimants who have refused work or voluntarily left work, respectively. For purposes of section 402(a) or (b), whether a job was suitable is a question that arises in the context of adjudicating a particular claimant's eligibility for benefits and necessarily involves a particular job.

In contrast, the active search for work requirement in Section 401(b) applies to all claimants. During 2011, 530,009 individuals filed applications for UC benefits and received at least one compensation payment. Given this volume of incoming claimants, the Department is not able to craft personalized work search rules for each individual. Section

401(b) and the proposed regulation present a context in which "suitable work" must be applied generally as opposed to the individualized context in which it is applied under sections 402(a) and (b). For this reason the regulation contains work search criteria that are applicable to the overall claimant population. The Department may properly promulgate a regulation that promotes convenience and practicality in the administration of the Law. *Kear v. UCBR*, 397 A.2d 468 (Pa. Cmwlth. 1979).

*Comment:* CLS stated that the regulation should include a definition of "suitable work."

*Response:* Claimants who refuse suitable work without good cause have been disqualified from receiving benefits since the Law was originally enacted in 1936. Act of December 5, 1936, 2<sup>nd</sup> Sp. Sess., P.L. (1937) 2897, No. 1. The current definition of "suitable work" has been in the Law since 1945. Act of May 29, 1945, P.L. 1145, No. 408. There has been case law applying the current definition of suitable work since 1948.

Against this background, including a definition of "suitable work" in the regulation would not be advisable. A new definition could be disruptive to the meaning of suitable work as supplied by the statutory definition and over 60 years of case law. Moreover, to the extent that a regulatory definition would be construed by the courts as inconsistent with the statutory definition, it would be invalid.

CLS states that the definition should not be a "rigid definition," but at the same time it should not be "so vague as to be meaningless." Also, while suitable work is a "very fact-specific proposition," CLS believes that the regulation could provide "general principles" but should not create "bright line rules." Crafting a definition to meet CLS' contradictory prescription would be difficult, and the end product likely would not provide guidance beyond the guidance already provided by the statutory definition and case law.

*Comment:* From the third claim week through the eighth claim week the regulation allows a claimant to restrict his job applications to "positions that would provide employment and wages similar to those the claimant had prior to his unemployment ....", even if his restriction results in less than two job applications per week. The Chamber commented that the term "similar" is undefined and ambiguous and could allow claimants to withhold applications for jobs that pay only nominally less than the claimant's prior employment. IRRRC recommended that the Department indicate how a claimant can determine if potential employment and wages are similar.

*Response:* The regulation uses the term "similar" to describe the type of positions to which a claimant may limit his job search during the third through the eighth claim week because that is the term used by the General Assembly in Section 401(b).

To determine whether the employment associated with a prospective position is similar to the claimant's prior employment, the Department expects that a claimant will make a common sense and straightforward comparison between the job duties and skills associated with the prospective position and the claimant's previous job duties and the skills used by the claimant in his prior employment. With regard to wages, the Department anticipates

that a claimant would compare his prior wages or salary to the wages or salary associated with the prospective position and, in good faith, not reject a prospective job because of a nominal difference in wages or salary.

Although the regulation allows a claimant to restrict job applications to similar positions during these weeks, that restriction is not required. If a claimant applies for at least two positions each week that would provide suitable employment under section 4(t) of the Law, 43 P.S. § 753(t), the claimant will satisfy subsection (e)(1) of the regulation. The claimant will not risk ineligibility for benefits if he applies for positions he mistakenly believes are similar or he simply applies for positions offering suitable employment without regard to their similarity to his prior work.

An issue regarding a claimant's eligibility for benefits under subsection (e)(1) of the regulation would arise only if the claimant fails to apply for two positions per week because he is limiting his job applications to similar positions. In such a case the claimant may be asked to explain his belief that similar positions were not available in a number sufficient to allow him to apply for not less than two such positions during the week or weeks in question.

*Comment:* Representative Keller expressed concern that a claimant may not be aware that he had filed claims for eight weeks of benefits and, as a result, had transitioned to the work search requirements applicable to the ninth claim week and subsequent weeks, especially if the Department does not provide notice to the claimant when the eighth week has been claimed.

*Response:* The Department will not know that a claimant has claimed his eighth week of benefits until after that week has ended, and the Department may not receive this information for as many as 14 days after the week has ended. The Department would not be able to send a notice to a claimant regarding job search requirements for the ninth claim week and later weeks that would be timely for the ninth, and possibly the tenth, week.

A claimant may refer to his work search logs to determine when he has transitioned to the requirements for the ninth and subsequent claim weeks. After he had searched for work for six weeks (the third through eighth claim weeks), the claimant would know that he had transitioned to the requirements that begin with the ninth claim week. Or, the claimant may keep a simple, ongoing count of the weeks for which he has filed claims for benefits.

*Comment:* Because the regulation does not allow a claimant to limit his job applications to similar positions during the ninth claim week and subsequent weeks if doing so would result in less than three job applications per week, and does not provide that applications for similar positions made through and including the eighth claim week may be used to meet the work search requirements for the ninth and subsequent claim weeks, IRRRC asked if a claimant who applies for all potential similar positions by the end of the eighth week is unfairly penalized for his efforts to find similar work.

*Response:* If a claimant makes more job applications than the number of applications required during the third through the eighth claim week the claimant may not apply the excess applications toward the number of applications required for the ninth claim week and subsequent weeks. If a claimant submits a job application to an employer during the third through the eighth claim week and the application is pending, the pending status of the application does not constitute a new job application for subsequent weeks while the application remains open. The claimant in these circumstances is not unfairly penalized. Despite the aggressiveness of a claimant's prior work search efforts, or the fact that a job application is pending, nonetheless the claimant is still unemployed and the requirement to continue to search for work is appropriate. However, under the final-form regulation, if a claimant is interviewed for a job the interview may substitute for an application for a position for purposes of subsections (e)(1) and (2) or an additional work search activity under subsection (e)(4), for the week in which the interview occurs. The Department added this provision to the final-form regulation because a job interview is an additional step toward employment beyond the initial application for the position.

*Comment:* CLS stated that the regulation could require a claimant who is a union member, but not associated with a hiring hall, to apply for non union jobs after the eighth claim week. CLS also stated that the regulation could require such a claimant to apply for non union jobs within his field, which could subject the claimant to union discipline. CLS recommended that the regulation clearly state that union members are not required to apply for non-union positions within their trade or field.

*Response:* The regulation does not require a union member to violate union rules.

During the third through the eighth claim week, a claimant could apply for similar positions covered by his union or similar positions that are outside the jurisdiction of his union. While a claimant may limit his job applications to similar positions during these weeks, he is not required to do so. A claimant could choose not to apply for a similar position that is within his union's jurisdiction, but provided by a non union employer, and instead apply for another type of position that would provide suitable employment under section 4(t) of the Law, 43 P.S. § 753(t).

During the ninth claim week and thereafter, a claimant can apply for similar positions covered by his union, similar positions that are outside the jurisdiction of his union, or other types of positions that would provide suitable employment under section 4(t) of the Law.

*Comment:* Subsection (f)(1)(i) of the regulation provides that a claimant is not required to apply for positions under subsections (e)(1) and (2) and perform work search activities under subsection (e)(4) during a week if 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." The Chamber and MASCP suggested that this provision be removed from the regulation. These organizations stated that the work search requirements of the Law and the regulation should apply consistently to all workers, union and non-union.



*Response:* This provision is narrowly drafted, and requires a claimant to maintain eligibility for referral by the hiring hall. This type of provision is a common feature among state work search requirements. It recognizes that a claimant who is a hiring hall member may be subject to union or hiring hall discipline if he applies directly to an employer for work, rather than follow hiring hall procedures. It is authorized by Section 401(b)(3), which allows the Department to recognize work search efforts that are traditional in a claimant's trade or occupation.

*Comment:* Subsection (f)(1)(ii) of the regulation provides that a claimant is not required to apply for positions under subsections (e)(1) and (2) and perform work search activities under subsection (e)(4) during a week if the claimant "actively participates during the week in a program or activity approved by the department as an acceptable work search alternative." IRRC suggested that the regulation identify the types of programs or activities that would be acceptable work search alternatives and where a claimant could locate a list of the alternatives.

*Response:* To date, the Department has not designated any programs or activities as acceptable work search alternatives. The Department will limit approved work search alternatives to robust and worthwhile programs likely to lead to reemployment. The Keystone Works Program established by Act of July 5, 2012, P.L. 970, No. 107, is an example of the type of program or activity that may be approved under this provision of the regulation. The Department will list the approved programs on its website.

*Comment:* Paragraph (4) of subsection (e) of the regulation requires a claimant to do at least one of the listed work search activities each week, in addition to the job applications required under paragraphs (1) and (2). Representative Keller recommended that a claimant be allowed to use the work search activities under paragraph (4) as alternatives to job applications under paragraphs (1) and (2).

*Response:* The work search activities under paragraph (4) are appropriate to supplement the job applications required under paragraphs (1) and (2), but they are not sufficient to substitute for job applications. Work search activities or programs that could substitute for job applications are limited to the programs or activities that may be designated under subsection (f)(1)(ii). (See previous comment and response.)

*Comment:* Section 401(b)(3) allows the Department to determine that a claimant is meeting the work search requirements of that section "if the claimant's efforts include actions comparable to those traditional actions in their trade or occupation by which jobs have been found by others in the community and labor market in which the claimant is seeking employment." A similar provision is found in the regulation at subsection (f)(5). Representative Keller suggested that the regulation indicate the process by which a claimant would have his work search efforts approved under this provision.

*Response:* A separate procedure for purposes of subsection (f)(5) is not necessary. A claimant engaging in work search actions that are traditional to his trade or occupation

would keep a record of his work search efforts as required by subsection (d)(2). To the extent that the claimant's recorded work search activities differ from what is required under subsections (e) and (f) of the regulation, the claimant may be asked to explain how his work search actions are comparable to what is done in his trade or occupation to find work.

*Comment:* Section 401(b)(1)(ii) provides that a claimant must post a resume on the CareerLink® system "unless the claimant is seeking work in an employment sector in which resumes are not commonly used." Representative Keller stated that the exception for employment sectors that do not use resumes should be included in the regulation.

*Response:* The Department has incorporated this suggestion into the final-form regulation.

*Comment:* Representative Keller and CLS commented that the regulation should provide that a claimant will not be disqualified from receiving benefits for failure to meet the requirements of the regulation, including the requirement to maintain work search records, if the claimant had "good cause" for such failure.

*Response:* Although case law recognizes a "good cause" defense to an act of willful misconduct, the other "good cause" exceptions to UC disqualification provisions are statutory. For example, under section 402(a) of the Law, 43 P.S. § 802(a), a claimant is not disqualified if he had "good cause" for refusing suitable work. Under section 402(b) a claimant is not disqualified if he had "cause of a necessitous and compelling nature" to voluntarily leave his job. Section 402(j) provides that a claimant is not disqualified if he had "justifiable cause" for not participating in reemployment services. In the absence of a "good cause" provision in Section 401(b), the Department is not including such a clause in the regulation. However, if a claimant's "good cause" for non compliance with the regulation also constitutes a reason why compliance "would be oppressive or ... inconsistent with the purposes of" the Law, the claimant's circumstances could be addressed under the waiver provision in Section 401(b)(6) and subsection (f)(6) of the regulation.

*Comment:* Section 401(b)(5) provides that the work search requirement does not apply to a claimant who is "advised by the employer of the date on which the claimant will return to work." Subsection (g)(2)(i) of the regulation requires the employer to notify the claimant of the recall date in writing. Representative Keller suggested that the regulation allow an employer to give verbal notice of a recall date to the claimant.

*Response:* Allowing verbal notice of a recall date would not be prudent. If an employer gives written notice of a recall date to the claimant, the claimant can provide a copy of the notice to the Department. If the employer communicates a recall date verbally, the Department would have to contact the employer to verify that a recall date had been designated. Because of the potential for abuse that would exist if the regulation recognized verbal recall dates, confirming the designated recall date with the employer would be essential. This would burden the Department with an additional administrative task. Moreover, the claimant's eligibility for benefits could be affected if the Department is unable to obtain confirmation of the recall date from the employer.

*Comment:* The work search requirements in Section 401(b) were supplied by Act 6. Section 9(3) of Act 6 provides that "[t]he amendment of section 401(b) of the Act shall apply to benefit years that begin on or after January 1, 2012." Consistent with Act 6, the Preamble to the proposed regulation stated that the regulation "would affect all claimants who file an application for UC benefits that takes effect on or after January 1, 2012." IRRC stated that it is unclear how the regulation could affect claimants who file UC applications on and after January 1, 2012, but at the same time not be effective until it is promulgated, as advocated by CLS and Representative Keller. IRRC also stated it is unclear whether the January 1, 2012, applicability date would require claimants already receiving benefits to overhaul their existing job searches or re-apply for benefits, and how the Department would notify them of potential changes to their eligibility. IRRC recommended that the regulation only apply to claimants who file an application after the regulation's effective date.

*Response:* There is a difference between the universe of claimants to whom the requirements in Section 401(b) and the regulation may *apply*, and the *effective date* of the regulation.

Subject to certain exceptions, an "application for benefits" takes effect on the first day of the calendar week in which it is filed. 34 Pa. Code § 65.42. The effective date of an application for benefits begins a 52 week period known as the "benefit year." Section 4(b) of the Law, 43 P.S. § 753(b). For example, a claimant who filed an application for benefits effective on December 25, 2011, established a benefit year that began on that date and will extend through December 22, 2012. Benefits paid to the claimant for weeks in this one year period would relate back to the application filed in 2011. The work search requirements would not apply to this claimant, regardless of the effective date of the regulation.

Any work search requirement that is dependent on the regulation for its legal foundation would not take effect until the regulation is promulgated. The requirement in the regulation to apply for a certain number of positions and participate in a work search activity during each claim week is a week-by-week eligibility criterion. As such, it would take effect beginning with the week following promulgation of the final-form rulemaking. It would not retroactively affect a claimant's eligibility for prior weeks.

The Department intends to notify the claimant community when the regulation is officially promulgated.

*Comment:* IRRC asked the Department to explain why the proposed regulation included certain provisions from Section 401(b), but did not include other provisions from the Law.

*Response:* The proposed regulation did not include the exception to the resume requirement in Section 401(b)(1)(ii) or the waiver provision in Section 401(b)(6). Because these exceptions to the general work search rules were established by statute, it was not necessary to incorporate them into the regulation in order to give them a legal foundation. However, in response to the comments the Department received these provisions have been included in the regulation.

*Comment:* IRRC commented that the Preamble and Regulatory Analysis Form that accompanied the proposed regulation did not contain data or specific information to quantify, justify or explain the requirements of the regulation. IRRC suggested that the Preamble and Regulatory Analysis Form accompanying the final-form rulemaking include a more detailed description of the basis for the various requirements in the regulation.

*Response:* In this Preamble and the Regulatory Analysis Form accompanying this final-form rulemaking, the Department has included the following additional information:

- Work search requirements for UC claimants shorten the duration of unemployment.
- An unemployed individual's chance of becoming reemployed decreases the longer he is unemployed.
- Among unemployed individuals who successfully find reemployment, half have done so after ten weeks of unemployment.

This information supports the regulation generally and, in particular, it supports the potentially more expansive job search requirements that apply under the regulation when a claimant remains unemployed after the eighth claim week.

The Department also has included a discussion of Pennsylvania case law on "suitable work." In cases involving a claimant unemployed for eight weeks or more, the courts have found work offered to the claimant to be suitable despite the fact that the work is different than his previous employment or would provide wages that are less than his prior wages.

In the Regulatory Analysis Form for the proposed rulemaking and this final-form rulemaking, the Department has indicated that the number of weekly job applications required under the regulation is comparable to the requirements of other states. Sixteen states require two employer contacts per week. Fifteen states require three or more employer contacts per week.

Prior to Act 6, Pennsylvania was the only state that did not require a claimant to search for work in order to qualify for benefits.

Section 401(b) explicitly requires the Department to establish the requirements that must be met in order to satisfy the work search provision. Moreover, subsequent to Act 6 federal law was amended to mandate a work search requirement. Section 303(a)(12) of the Social Security Act, 42 U.S.C. § 503(a)(12), supplied by section 2101 of Act of February 22, 2012, P.L. 112-96, provides that each State must require an active search for work as a UC eligibility criterion.

When drafting the regulation, the Department began with the minimum work search requirements specified by the General Assembly in Section 401(b). From there, the Department used its best judgment to craft a regulation that would not impose burdensome requirements but at the same time would establish a meaningful work search regimen. Many of the suggestions received during the public comment period were included in the final-form regulation.

*Comment:* IRRC suggested that the Department include cross references to the Law and Purdon's citations in the regulation, to move the definitions to the beginning of the regulation, and to exclude a phrase from subsection (e)(3)(i).

*Response:* The Department has incorporated these suggestions into the final-form regulation.

*Comment:* CLS and Representative Keller commented that the Department may not include work search requirements among the criteria to determine eligibility for any week that precedes the effective date of the regulations. Representative Keller suggested that the Department assist claimants to register for employment search services by telephone, and stated it was unclear whether CareerLink® offices would register claimants. CLS stated that the Department should presume that the positions for which a claimant has applied would constitute suitable work for the claimant, and should provide information about the work search requirements in languages other than English.

*Response:* These comments do not address the content of the regulation. Rather, they are suggestions to the Department regarding the manner in which the Department will administer the work search requirements.

#### **D. Affected Persons**

Pursuant to section 9(3) of Act 6, this regulation will apply only to claimants who file an application for UC benefits that takes effect on or after January 1, 2012. It will not apply to claimants who qualify for one or more of the exceptions in the regulation.

#### **E. Fiscal Impact**

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

The Department will integrate administration of the active work 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.

#### **F. Paperwork Requirements**

Subsection (d) 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 manner as the Department requires.

#### **G. Sunset Date**

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

#### **H. Effective Date**

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

#### **I. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on April 19, 2012, the Department submitted a copy of the notice of proposed rulemaking, published at 42 Pa. B. 2378, to IRRC and the Chairpersons of the Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department provided IRRC and the Committees with copies of the comments received during the public comment period and other information as requested. In preparing this final-form rulemaking, the Department has considered the comments received from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)) on \_\_\_\_\_, this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_ and approved this final-form regulation.

#### **J. Findings**

The Department finds that:

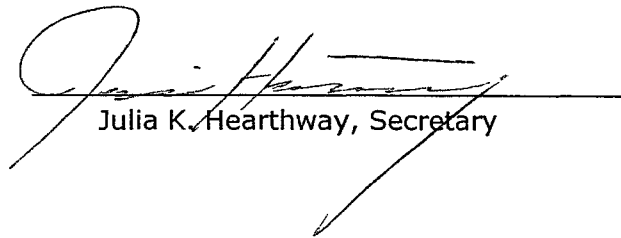
- (1) Under sections 201 and 202 of the Commonwealth Documents Law, 45 P.S. §§ 1201 and 1202, and the regulations thereunder at 1 Pa. Code §§ 7.1 and 7.2, the Department gave public notice of its intention to promulgate this rulemaking by publication at 42 Pa. B. 2378.
- (2) A public comment period was provided as required by law, and all comments received were considered.
- (3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 42 Pa. B. 2378 .
- (4) This final form rulemaking is necessary and suitable for the administration of the Law.

#### **K. Order**

The Department, acting under the authority of the Law, orders that:

- (1) The regulations of the Department, 34 Pa. Code Chapter 65, are amended as set forth in Annex A.

- (2) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.
- (3) The Secretary and the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (4) This order shall take effect upon publication in the Pennsylvania Bulletin and as provided above in Section H. Effective Date.



Julia K. Hearthway, Secretary

**Annex A**  
**TITLE 34. LABOR AND INDUSTRY**  
**PART II, SUBPART A. UNEMPLOYMENT COMPENSATION**  
**CHAPTER 65. EMPLOYEE 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.] DEFINITIONS. FOR PURPOSES OF THIS SECTION AND SECTION 401(B) OF THE LAW (43 P.S. § 801(B)) 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., 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.

(b)} Initial procedures. When a claimant files an application for benefits in accordance with § 65.41, the department will DO THE FOLLOWING:

- (1) provide [information relevant to the claimant's reemployment and receipt of employment services to the employment office] ~~information~~ INSTRUCTIONS to the claimant regarding the process to register for employment search services and post a resume in the Pennsylvania CareerLink® system,
- (2) ~~and~~ advise the claimant of services provided by the department and the Pennsylvania CareerLink® system ,AND
- (3) PROVIDE A COPY OF THE RECOMMENDED WORK SEARCH RECORD FORM TO THE CLAIMANT AND ADVISE THE CLAIMANT THAT THE FORM IS AVAILABLE ON THE DEPARTMENT'S INTERNET WEBSITE.

(b C ) 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. (SECTION 401(B)(1)(i) OF THE LAW, 43 P.S. §801(B)(1)(I)). 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.

(e D) Weekly requirements. In order to be eligible for compensation for the third consecutive week of the benefit year FOR WHICH A CLAIM FOR COMPENSATION IS FILED and each week thereafter FOR WHICH A CLAIM FOR COMPENSATION IS FILED a claimant shall:

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

(2) COMPLETE THE RECOMMENDED WORK SEARCH RECORD FORM FOR THE WEEK OR create a record of his work search activities during the week THAT CONTAINS THE SAME INFORMATION THAT WOULD BE REQUIRED TO COMPLETE THE RECOMMENDED FORM , 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 E) Weekly work search activities

(1) During each week from the third consecutive week of the benefit year FOR WHICH A CLAIM FOR COMPENSATION IS FILED through the eighth consecutive week of the benefit year FOR WHICH A CLAIM FOR COMPENSATION IS FILED, the claimant shall apply for employment as follows:

(i) Except as provided in subparagraph (ii), the claimant shall apply for at least two positions THAT WOULD PROVIDE SUITABLE EMPLOYMENT UNDER SECTION 4(T) OF THE LAW (43 P.S. § 753(T)).

(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. (SECTION 401(B)(1)(III) OF THE LAW, 43 P.S. § 801(B)(1)(III)).

(2) During the ninth consecutive week of the benefit year FOR WHICH A CLAIM FOR COMPENSATION IS FILED and each week thereafter FOR WHICH A CLAIM FOR COMPENSATION IS FILED, 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 (43 P.S. § 753(T)).

(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- PRIORTIZE THE TYPES OF POSITIONS FOR WHICH HE WILL APPLY IN THE FOLLOWING ORDER:

(1) POSITIONS DESCRIBED IN PARAGRAPH (1)(II).

(2) OTHER POSITIONS, TO THE EXTENT THAT EXPANDING THE SCOPE OF THE POSITIONS FOR WHICH HE WILL APPLY BEYOND THE POSITIONS DESCRIBED IN PARAGRAPH (1)(II) IS NECESSARY IN ORDER TO APPLY FOR AT LEAST THREE POSITIONS EACH 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 F) Alternative requirements AND WAIVER.

(1) No work search activities under subsection (d E ) 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 (43 P.S. § 753(M.3), the following shall apply:

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

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

(3) IF A CLAIMANT IS INTERVIEWED FOR A POSITION BY AN EMPLOYER OR AN EMPLOYER REPRESENTATIVE, THE INTERVIEW MAY SUBSTITUTE FOR AN APPLICATION FOR A POSITION FOR PURPOSES OF SUBSECTION (E)(1) AND (2) OR MAY SUBSTITUTE FOR A WORK SEARCH ACTIVITY FOR PURPOSES OF SUBSECTION (E)(4) FOR THE WEEK IN WHICH THE INTERVIEW OCCURS.

(3 4) For purposes of subsection (b C), 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 5) 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. (SECTION 401(B)(3) OF THE LAW, 43 P.S. § 801(B)(3)).

(6) THE DEPARTMENT MAY WAIVE OR ALTER THE REQUIREMENTS OF THIS SECTION OR SECTION 401(B) OF THE LAW (43 P.S. § 801(B)) IN CASES OR SITUATIONS WITH RESPECT TO WHICH THE SECRETARY FINDS THAT COMPLIANCE WITH SUCH REQUIREMENTS WOULD BE OPPRESSIVE OR WHICH WOULD BE INCONSISTENT WITH THE PURPOSES OF THE LAW. (SECTION 401(B)(6) OF THE LAW, 43 P.S. § 801(B)(6)).

(I) A CLAIMANT MAY SUBMIT A REQUEST TO THE DEPARTMENT TO WAIVE OR ALTER THE REQUIREMENTS OF THIS SECTION OR SECTION 401(B) OF THE LAW. THE CLAIMANT MAY COMPLETE AND SUBMIT THE RECOMMENDED

WAIVER REQUEST FORM AVAILABLE ON THE DEPARTMENT'S INTERNET WEBSITE, OR SUBMIT A WRITTEN REQUEST THAT CONTAINS THE SAME INFORMATION THAT WOULD BE REQUIRED TO COMPLETE THE RECOMMENDED FORM.

(f G) Applicability.

(1) This section does not apply as provided in section 401(b)(4) and (5) of the law (43 P.S. § 801(B)(4) AND (5)) 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 (43 P.S. § 916.1 ET SEQ.).

(2) For purposes of section 401(b)(5) of the law (43 P.S. § 801(B)(5):

(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 (43 P.S. § 801(B)(5)) 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.

(3) THE REQUIREMENT IN SECTION 401(B)(1)(II) OF THE LAW (43 P.S. § 801(B)(1)(II)) DOES NOT APPLY TO A CLAIMANT WHO IS SEEKING WORK IN AN EMPLOYMENT SECTOR IN WHICH RESUMES ARE NOT COMMONLY USED.

(g H) Extended benefits. For purposes of extended benefits under Article IV-A of the law (43 P.S. § 811 ET SEQ.), if the eligibility requirements for extended benefits include work search requirements in addition to the requirements of section 401(b) of the law (43 P.S. § 801(B)) 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  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
November 5, 2012

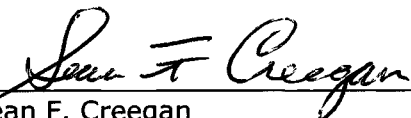
**Re: Final-Form Rulemaking  
Title 34 Labor & Industry  
Part II, Subpart A. Unemployment Compensation  
Chapter 65. Employee Provisions  
Document No. 12-96**

Pursuant to 71 P.S. § 745.5a(a), the following commentator requested the information described in 71 P.S. § 745.5a(b) regarding the final-form regulation:

Michael Hollander, Esq.  
Community Legal Services of Philadelphia  
1424 Chestnut Street  
Philadelphia, PA 19102-2505

The following organization did not provide substantive comments on the proposed regulation, but did request the information described in 71 P.S. § 745.5a(b) regarding the final-form regulation:

Melissa Morgan  
Pennsylvania State Association of Township Supervisors  
4855 Woodland Drive  
Enola, PA 17025

  
Sean F. Creegan  
Deputy Chief Counsel  
Department of Labor and Industry  
651 Boas Street  
Harrisburg, PA 17121

11-5-12  
Date

COMMONWEALTH OF PENNSYLVANIA

November 5, 2012

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

**Re: Final-Form 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 final-form rulemaking package consisting of a face sheet, preamble, annex and regulatory analysis form prepared by the Department of Labor and Industry.

This rulemaking will amend Chapter 65, Employee Provisions, of the Unemployment Compensation regulations.

Comments, suggestions or questions should be directed to Sean F. Creegan, Deputy Chief Counsel, 10<sup>th</sup> Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; Telephone: 717-787-4186; Fax: 717-787-1303; E-mail: [screegan@state.pa.us](mailto:screegan@state.pa.us).

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

Sincerely,

  
Julia K. Hearthway  
Secretary

cc w/ encl: Arthur McNulty, Chief Counsel  
Gregg D. Shore, Deputy Secretary for Unemployment Compensation Programs  
David G. Greineder, Director, Legislative Affairs  
Gwenn A. Dando, Director, Office of Policy, Planning and Development  
Susan E. Dickinson, Director, Office of Unemployment Compensation Service Centers  
Kevin M. Cicak, Director, Office of Unemployment Compensation Benefit Policy  
Sean F. Creegan, Deputy Chief Counsel

OFFICE OF THE SECRETARY | Department of Labor & Industry | 651 Boas Street |  
Room 1700 | Harrisburg, PA 17121 | 717.787.3756 | [www.dli.state.pa.us](http://www.dli.state.pa.us)

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

I.D. NUMBER: 12-96

SUBJECT: 34 Pa. Code, Part II, Subpart A., Unemployment Compensation  
Chapter 65, Employee Provisions

AGENCY: DEPARTMENT OF LABOR AND INDUSTRY

**TYPE OF REGULATION**

Proposed Regulation

X 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

2012 NOV -5 PM 12: 19

RECEIVED  
IRRC

**FILING OF REGULATION**

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON LABOR & INDUSTRY

11-5-12 Pam Davis

MAJORITY CHAIRMAN Ron Miller

11-5-12 William F. Keller

MINORITY CHAIRMAN William F. Keller

SENATE COMMITTEE ON LABOR & INDUSTRY

11/5/12 John R. Gordner

MAJORITY CHAIRMAN John R. Gordner

11/5/12 Christine M. Tartaglione

MINORITY CHAIRMAN Christine M. Tartaglione

11/5/12 Cooper

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU