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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. email	Sue Badeau to Nicole Rabner re: welcome back (1 page)	11/30/1999	b(6)
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COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Ann O'Leary
OA/Box Number: 19580

FOLDER TITLE:

NPRM RE IU BA [Notice of Proposed Rulemaking Regarding Unemployment Insurance, Birth and Adoption] [1]

2013-0436-S
rc1296

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE WHITE HOUSE

WASHINGTON
November 17, 1999

MEMORANDUM FOR JACK LEW

FROM: BRUCE REED

SUBJECT: EXECUTIVE ORDER TO BAN DISCRIMINATION AGAINST
PARENTS IN THE EXECUTIVE BRANCH

I am writing to request that you put into expedited clearance the attached Executive Order, pursuant to Executive Order 11030. The proposed Order would prohibit employment discrimination in the executive branch against employees because they are parents or exercise parental responsibilities.

The proposed Executive Order mirrors the "Ending Discrimination Against Parents Act of 1999," legislation that the President announced in his 1999 State of the Union address and was introduced on November 10, 1999 by Senators Dodd and Kennedy. This bill would, for the first time, protect parents and those with parental responsibilities against job discrimination. It does not bar employers from making hiring and promotion decisions on the basis of qualifications or job performance regardless of the employee's parental status, but it does ensure that workers are not discriminated against simply because they are parents or exercise parental responsibilities.

By issuing this Executive Order, the President will hold the Executive Branch as a model for this important new set of protections. The Executive Order would cover employees in the Executive Branch who are biological, adoptive, or foster parents; stepparents; custodians of individuals who are under the age of 18 or who are 18 or older but incapable of self-care because of a mental or physical disability; and those actively seeking custody or adoption of, and those who stand "in loco parentis" for, such individuals. The Order would bar discrimination against covered persons in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment.

The Order would also prohibit employers in the Executive Branch from acting on mere assumptions that parents, or those with parental responsibilities, cannot satisfy the requirements of a particular position. It would, for example, prohibit employers from:

- taking a parent off the "fast track" due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs;
- preferring applicants without children over equally or better qualified working parents; or

- refusing to hire single parents under any circumstances.

However, the proposed Order would not prohibit an employer from making decisions on the basis of a person's job performance. The Order would not, for example, prevent an employer from disciplining workers who arrive late, even if an individual is late because of child care responsibilities. The Executive Order also would not bar an employer from rejecting, for a job that requires extensive travel, an applicant who states that he is unwilling to travel because of his parental responsibilities. Thus, the Order would not interfere with an employer's ability to select workers who are able to perform the jobs in question; the Order would simply ensure that workers are not discriminated against simply because they are parents.

Thank you for your assistance in clearing this Order expeditiously, for release as early as November 27, 1999. The staff contact in the Domestic Policy Council is Nicole Rabner, who is reachable at extension 67263.

Draft

EXECUTIVE ORDER

FURTHER AMENDMENT TO EXECUTIVE ORDER 11478, EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination based on an individual's status as a parent, it is hereby ordered that Executive Order 11478, as amended, is further amended as follows:

Section 1. Amend the first sentence of section 1 by substituting "sexual orientation, or status as a parent." for "or sexual orientation."

Sec. 2. Insert the following new sections 6 and 7 after section 5:

"Sec. 6. An individual has the status of a parent, if, with regard to another individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, that individual –

- (a) stands in loco parentis to such other individual; or
- (b) has the status of –
 - (i) a biological parent;
 - (ii) an adoptive parent;
 - (iii) a foster parent
 - (iv) a stepparent;
 - (v) a custodian of a legal ward; or
 - (vi) a person who is actively seeking legal custody or adoption.

"Sec. 7. The Office of Personnel Management shall be responsible for developing and implementing guidance to effectuate the provisions of this order prohibiting discrimination on the basis of an individual's sexual orientation or status as a parent."

Sec. 3. Amend section 4 by substituting “and appropriate to carry out its responsibilities under this Order” for “appropriate to carry out this Order.”

Sec. 4. Renumber current sections, 6, 7, and 8 as sections 8, 9, and 10, respectively.

Sec. 5. Add a section 11 to read as follows:

“Sec. ¹¹7. This Executive Order does not confer any right or benefit enforceable in law or equity against the United States or its representatives.”

WILLIAM J. CLINTON

THE WHITE HOUSE
[date]

The Mayor's Abortion Stance

Most politicians try to sidestep issues that divide voters along militant, angry lines. But New York City's mayor, Rudolph Giuliani, firmly rejected that kind of evasion when asked about late-term abortions during a trip to Texas.

The mayor said, with no apparent qualifier, that he did not plan to change his current position in favor of abortion rights to suit the leadership of New York's Conservative Party. Its chairman is calling on Mr. Giuliani to join other well-known Republicans in endorsing a ban on the late-term procedures that they refer to as partial birth abortions. But the mayor has steadfastly refused to alter his support of abortion rights. He did so again Monday in Texas in the company of Gov. George W. Bush, with whom he disagrees on this issue.

What makes the mayor's stand particularly stalwart is that it could easily jeopardize his nomination by the Conservative Party of New York State. No Republican has won a statewide election in the last 25 years without the Conservative Party

line on the ballot, a position that generally carries from 200,000 to 350,000 votes. If the expected race between Hillary Rodham Clinton and Mr. Giuliani tightens, those votes would look even sweeter than they do already. The Conservative Party chairman, Michael Long, vows that he will not bargain on the issue. Mr. Long is even threatening to bring out an "aggressive" candidate to run on the Conservative line unless the mayor changes his mind and agrees to endorse a ban on late-term abortions. This extra candidate would surely siphon votes away from Mr. Giuliani and help Mrs. Clinton's chances.

Once next year's Senate campaign is in full throttle, Mr. Long may view things differently. Mr. Giuliani may eventually make a courtesy visit to the Conservatives and try to persuade them to respect either his principled stand or, at least, the political realities. But the Giuliani camp said that his basic position would not be compromised, making this a case in which the mayor's stubborn streak is well deployed.

Paid Leave for Parents

President Clinton's plan to give states the option of providing unemployment insurance benefits for new parents is good for working families. The 1993 Family and Medical Leave Act gave workers the right to take up to 12 weeks of unpaid leave to care for a newborn child or sick relative without losing their jobs. But many low-income workers cannot afford to take any amount of time off without pay. The new experimental project, which would be totally voluntary, would allow states to subsidize a leave following the birth or adoption of a child if they so chose. At least four states — Vermont, Maryland, Massachusetts and Washington — have proposed legislation to extend unemployment benefits to parental leave.

Under current federal law, states have substantial flexibility to determine eligibility for unemployment benefits and benefit levels. Although unemployment insurance is traditionally seen as helping only those who have been involuntarily laid off and are immediately available to work, many states have granted benefits to workers who are not in that narrow category. A third of the states, for example, grant unemployment benefits to workers who leave

their jobs because of urgent family reasons, such as a spouse being relocated. Federal regulations have likewise allowed states to grant unemployment benefits to workers who are off the job because of training programs, illness in some situations, jury duty or temporary layoffs. Allowing states to experiment with providing benefits to new parents could help meet the needs of the changing labor force where mothers and fathers both work. The Labor Department would evaluate the impact of the benefits on insurance costs, and on worker retention and management, before the program is made permanent.

Business lobbies are concerned that a new benefit would drain the trust funds that pay unemployment insurance. But many states currently have significant trust fund surpluses because of low unemployment in recent years, and many have chosen to reduce unemployment insurance taxes as a result. State policy makers are in the best position to determine whether their labor force would be helped by expanded parental leave benefits. The Clinton administration would give them the ability to move forward on this issue.

The New York Times

WEDNESDAY, DECEMBER 1, 1999

PROVIDING FAMILY LEAVE INCOME THROUGH UNEMPLOYMENT INSURANCE Questions & Answers

A new federal regulation will be issued in the next few days that encourages states to let new parents collect unemployment insurance while on unpaid family leave. This document answers some of the most common questions about using unemployment insurance to provide family leave income and about the upcoming regulation.

Background

Since the Family and Medical Leave Act (FMLA) was enacted in 1993, it has helped at least 24 million Americans take up to 12 weeks of *unpaid*, job-protected leave to care for their new babies and sick family members, and to recover from their own serious illnesses, without hurting businesses. Yet too many women and men simply cannot afford to take unpaid leave, even when their families need them most. The bipartisan Family Leave Commission found that nearly two-thirds of employees who did not take needed leave cited lost wages as the primary reason.

In June 1999, the National Partnership for Women & Families launched the Campaign for Family Leave Income, a multi-year initiative to make family and medical leave more affordable for all working Americans. "Family leave income" (FLI) describes a variety of ways to help people afford time off when a baby is born or adopted, when a close relative is seriously ill, or when workers themselves need medical care.

Unemployment insurance is one of the most widely considered and promising vehicles for providing FLI. Several states -- including Massachusetts, Maryland, Vermont, and Washington -- are considering extending unemployment benefits to employees taking family or medical leave. A 1998 National Partnership survey found that most Americans -- 79% -- support this approach.

Family Leave Income and Unemployment Insurance

Why should unemployment insurance be used to provide FLI benefits?

Originally a safety net primarily for male breadwinners, unemployment insurance was designed with the assumption that women could devote themselves exclusively to family needs. With the massive entry of women into the workforce and the rapid aging of the population, along with an historically high demand for workers, the unemployment insurance system must evolve to accommodate the real-life challenges facing today's families: more people need care, but fewer people are available to provide that care without compensation. Using unemployment insurance to provide FLI benefits would help update the unemployment system to fit the changing composition of the American workforce and the American family.

Won't it be very expensive to provide FLI through unemployment insurance?

No. Because it is based on an insurance model, providing FLI this way is very inexpensive. For instance, extending unemployment benefits to Massachusetts workers on family or medical leave is estimated to cost no more than a modest \$1.25 per covered worker per week. Further, in states with such proposals, the cost can be fully offset by unemployment fund surpluses -- surpluses that states like Massachusetts are considering simply returning to employers in the form of tax cuts.

At the same time, the hidden costs of *not* having FLI are substantial. The costs to employers include higher turnover and replacement costs and lower productivity when employees are forced either to forgo needed time off from work or to leave their jobs entirely. The costs to society include increased health care and public benefits expenses. In fact, the bipartisan Family Leave Commission found that nearly one in ten leave-takers, and 12% of women leave-takers, were forced onto public assistance during leave.

But isn't unemployment just for people who get laid off?

Since its creation in the 1930's, the unemployment insurance system has given states considerable flexibility in determining how best to use their unemployment funds, including setting eligibility requirements. Many states have found it worthwhile to provide unemployment benefits to people in situations that do not fit the narrow, traditional criteria of being involuntarily laid off and immediately available for work. Examples of such state policies now in place with the approval of the U.S. Department of Labor include the following:

- ◆ Employees who are temporarily laid off, but will be "recalled" to work for the same employer, are not required to be "available" to work for anyone else to be eligible for unemployment benefits in seven states. Similarly, people who are temporarily not working because they are on family or medical leave also want and intend to return to the same job: the bipartisan Commission on Leave found that 84% of employees who take FMLA leave return to their jobs.
- ◆ Several states provide benefits to workers who become unemployed and then develop a physical condition that prevents them from working. Employees who must take medical leave to recover from a physical disability are in essentially the same position. The mere timing of their disability should not control employees' access to benefits.
- ◆ One-third of states already recognize that employees who must leave their jobs for an urgent and compelling reason -- such as a spouse getting relocated or the inability to find child care -- still deserve unemployment benefits, even though they were not laid off.
- ◆ People enrolled in approved job training programs receive benefits, even though they are allowed to turn down work during their training periods. Such employees are no more available for work than employees taking family or medical leave.

Won't providing FLI endanger unemployment insurance trust funds in times of recession?

No. The real threat to trust funds comes not from an expansion of unemployment benefits, but from repeated and dramatic employer tax cuts. Even as American businesses have enjoyed record-breaking profits, they have been lobbying aggressively and successfully for large cuts in their unemployment taxes: at least 15 states have cut unemployment taxes sharply in the past five years, and legislation to lower taxes is pending in many more. Ironically, some of the same business groups insisting that providing FLI would "devastate" state trust funds are still calling for cuts that would deplete those same funds -- but would benefit their own bottom line. For example, Massachusetts business interests oppose using unemployment insurance for family or medical leave, even as they lobby for tax cuts equal to the entire cost of providing FLI throughout the state.

In fact, many states are well positioned for an expansion of unemployment insurance benefits to include employees on family and medical leave. State trust fund reserves increased 85% overall from the end of the last recession in 1992 through 1998. Well over half the states have reserves that exceed solvency guidelines specifically designed to measure the ability to withstand a severe recession. These guidelines are calculated by averaging actual unemployment costs from the three worst economic downturns of the previous twenty years.

The President's Directive on Unemployment Insurance for New Parents

What was President Clinton's directive to the Department of Labor?

In May 1999, the President directed the Secretary of Labor to propose a new regulation confirming that states may offer unemployment insurance to working parents on leave to care for a newborn or newly adopted child.

How will the regulation be developed and when will it go into effect?

The Department of Labor is poised to issue a "notice of proposed rulemaking" -- or draft regulation -- within the next few weeks. States and the public will have the opportunity to submit comments as part of the process of developing the final regulation. An effectiveness date for the final regulations has not yet been set.

Why is this regulation necessary?

Four states (Maryland, Massachusetts, Vermont, and Washington) asked the Administration to confirm that they could use their unemployment insurance systems to offer FLI in accordance with federal law. In response, the President directed the Labor Department to clarify how states wishing to use unemployment insurance to assist new parents could put those plans into effect.

How long will people be able to take leave and receive pay?

States will be free to define the length of time employees may receive unemployment insurance while on family leave.

Who will be eligible for this new form of unemployment insurance coverage?

Each state may establish its own eligibility requirements. Some states may choose to cover every worker who already qualifies for unemployment benefits. Other states may elect different criteria, such as eligibility for leave under the federal FMLA.

Why should new parents be singled out for this benefit?

Providing FLI benefits to new parents is an important investment in the future workforce. Research shows that parental involvement is crucial to help babies develop physically, emotionally, and intellectually, and that children benefit from early parental attention long after they leave infancy.

While recognizing the needs of new parents, advocates for women, children, parents, seniors, and people with disabilities also strongly support making family leave affordable for those who need to care for seriously ill children or other family members or to recover from their own serious illness.

Right now, employers who fire more workers pay higher unemployment taxes -- it's called "experience rating." Won't this regulation increase unemployment taxes for employers with more new parents on the payroll?

No. States can, and should, exempt this new form of unemployment coverage from experience rating.

Won't the new regulation force state governments to pay for people's individual choices?

No. State participation in this program is wholly voluntary. Indeed, the new regulation protects state governments' choice to provide FLI to new parents through unemployment insurance (or not). In choosing to set up FLI programs, states fulfill our collective responsibility to help young families thrive, to value caregiving, and to prevent poverty -- all longstanding American values that are already reflected in a range of public policies, from Social Security to dependent care tax credits.

Isn't this a backdoor way of addressing a question that Congress should decide?

No. In creating the national unemployment compensation system in 1935, Congress envisioned a federal-state cooperative scheme that would provide a uniform national floor for the benefits states could grant, while leaving states otherwise free to develop eligibility criteria that would offer more generous coverage and benefits. When questions about this scheme have arisen, however, states have routinely asked the Department of Labor to clarify the law, as four states did in this case.

This document was produced by the Campaign for Family Leave Income, a project of the National Partnership for Women & Families. For more details about state proposals and programs and the Campaign for Family Leave Income, please see www.nationalpartnership.org or call 202/986-2600.

11/29/99

Employment and Training Administration

20 CFR Part 604

RIN 1205-AB21

Birth and Adoption Unemployment Compensation

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Labor (DOL) is issuing for comment a Notice of Proposed Rulemaking to create, by regulation, an opportunity for State agencies that administer the Unemployment Compensation (UC) program to pay, under a voluntary experimental program, UC to parents who take time off from employment after the birth or placement for adoption of a child. This effort responds to the President's Executive Memorandum issued May 24, 1999, directing the Secretary of Labor to allow States the opportunity to develop innovative ways of using UC to support parents taking leave to be with their newborns or newly-adopted children and to evaluate the effectiveness of using the UC system for these or related purposes. This regulation will permit interested States to experiment with methods for allowing the use of the UC program for this purpose.

DATES: DOL invites written comments on this proposal. Comments are to be submitted by *[insert date 45 days after date of publication in the Federal Register]*.

ADDRESSES: Submit written comments to Grace A. Kilbane, Director, Unemployment Insurance Service, Employment and Training Administration (ETA), U.S. Department of

Labor, 200 Constitution Avenue, N.W., Room S-4231, Washington, DC 20210. Prior to issuance of this Notice of Proposed Rulemaking, the DOL received correspondence on the subject matter of the proposal. This correspondence, along with correspondence received in response to the Notice of Proposed Rulemaking, will be made part of the rulemaking record and will be considered in the development of a final rule.

FOR MORE INFORMATION CONTACT: Gerard Hildebrand, Unemployment Insurance Service, ETA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4231, Washington, DC 20210. Telephone: (202) 219-5200 ext. 391 (this is not a toll-free number); facsimile: (202) 219-8506.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Overview

(1) *Need for Birth and Adoption Leave*

On May 23, 1999, the President directed the Secretary of Labor to issue a regulation allowing unemployment fund moneys to be used to provide partial wage replacement to mothers and fathers on leave following the birth or adoption of a child. In discussing the importance of providing partial wage replacement, the President stated: “[T]hose first weeks of life are critical to the bonding of parents and children, and they can have long-term positive developments for the children. No parent should have to

miss them.” The President also noted that, “We can do this in a way that preserves the soundness of the unemployment insurance system and continues to promote economic growth.”

The President elaborated on this Birth and Adoption UC proposal in a May 24, 1999, memorandum to the heads of executive departments:

First, I hereby direct the Secretary of Labor to propose regulations that enable States to develop innovative ways of using the Unemployment Insurance (UI) system to support parents on leave following the birth or adoption of a child. In addition, I direct the Secretary to develop model State legislation that States could use in following these regulations. In this effort, the Department of Labor is to evaluate the effectiveness of using the system for these or related purposes. In a 1996 study conducted by the Commission on Family and Medical Leave, lost pay was the most significant barrier to parents taking advantage of unpaid leave after the birth or adoption of a child. This new step will help to give States the ability to eliminate a significant barrier that parents face in taking leave.

In response to the President’s May 24, 1999, Executive Memorandum, the DOL is exercising its authority to interpret Federal UC statutes, and, in particular the statutes’ longstanding “able and available” requirements, by implementing an experimental program to examine the use of the UC program as a means for providing partial wage replacement to employees who desire to take approved leave or otherwise leave their employment following the birth or placement for adoption of a child.

(2) The Federal-State UC System

The Federal-State UC program is administered as a partnership of the Federal government and the States. States collect State UC taxes used to pay compensation while the Federal government collects taxes, used for grants for State UC administration, under the Federal Unemployment Tax Act (FUTA). (The FUTA is codified at 26 U.S.C. 3301 - 3311.) The DOL has broad oversight responsibility for the Federal-State UC program, including determining whether a State law conforms and its practices substantially comply with the requirements of Federal UC law. If a State's law conforms and its practices substantially comply with the requirements of the FUTA, then the Secretary of Labor issues certifications enabling employers in the State to receive credit against the Federal unemployment tax as provided under section 3302, FUTA. If a State and its law are certified under the FUTA, and the State's law conforms and its practices substantially comply with the requirements of Title III of the Social Security Act (SSA), then the State receives grants for the administration of its UC program. (Title III of the SSA is codified at 42 U.S.C. 501 - 504.) The DOL enforces Federal UC law requirements through the FUTA credit and grant certification processes.

(3) Ability to Work and Availability for Work

The DOL has the authority and responsibility to interpret the provisions of Federal UC law such as the "able and available" requirements. Although no explicit able and available requirements are stated in Federal law, the DOL and its predecessors (the Social Security Board and the Federal Security Agency) interpreted four provisions of

Federal UC law as requiring that claimants be able to and available for work. Two of these provisions at section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a State's unemployment fund to the payment of "compensation." Section 3306(h), FUTA, defines "compensation" as "cash benefits payable to individuals with respect to their unemployment." The able and available requirements provide a test of a claimant's "unemployment."

The other two provisions found in section 3304(a)(1), FUTA, and section 303(a)(2), SSA, require that compensation "be paid through public employment offices."

The requirement that UC is to be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to an individual's search for employment and to his or her ability to work and availability for work.

Agencies administering the Federal-State UC program have for over 60 years interpreted these four statutory provisions to require a participating State to have able and available requirements.

In response to practical economic and societal concerns, the DOL has previously, as discussed below, exercised its authority to interpret Federal UC statutes regarding the able and available requirements to address several specific areas: training, illness, jury duty and temporary layoffs. Under its authority to interpret Federal UC law and consistent with its broad oversight responsibility, the DOL interprets the Federal able and

available requirements to include a voluntary experimental program for examining the use of the UC program to provide partial wage replacement to employees who take approved leave or otherwise leave employment to be with their newborns or newly-adopted children. This experiment recognizes the impact of women in the workforce and responds to the dramatic societal and economic changes resulting from the large number of families where both parents work. It should allow parents of newborns and newly-adopted children to strengthen their availability for work by providing them with the time and financial support to address several vital needs that accompany the introduction of a new child into the family. The program would allow such parents to provide the initial care that the child will need, to form a strong emotional bond with the child, and to establish a secure system of child care that, once in place, will promote the parents' long-term attachment to the workforce.

(4) Minimal Tests of the Able and Available Requirements

Consistent with DOL interpretations, some States have imposed minimal tests of the able and available requirements for specific situations, provided the claimant has demonstrated an attachment to the labor force.

Approved Training. Prior to incorporating the training provision into the Federal laws, the DOL encouraged States to treat individuals in training approved by the State agency as meeting the able and available requirements since such training represents the most effective step available to the individual to return to work. The DOL cautioned that

State agencies should only approve short-term training that would make individuals job ready. In 1970, Congress, recognizing the importance of training in remedying unemployment, made this training provision mandatory for all States. (Section 3304 (a)(8), FUTA.) The Federal able and available requirements are preserved because individuals who fail to attend training, except by specific waiver, are held to be unavailable for work and ineligible for UC.

Illness. Eleven States allow an individual who initially meets the able and available requirements, but then becomes ill, to receive UC payments without interruption, provided that no suitable work is offered and refused. The DOL approved such State laws in an effort to deter disqualification for UC where a claimant was not “able and available” for perhaps one day, or even one hour, out of a week. Two States, Alaska and Massachusetts, cap the number of weeks ill claimants can collect UC at six weeks and three weeks, respectively; the other States have no statutory limitations. The Federal able and available requirements are preserved because claimants must initially demonstrate their ability to and availability for work before the illness and must be held ineligible if they refuse an offer of suitable work.

Similarly, under the Federal-State Extended Unemployment Compensation Act of 1970 (EB)(26 U.S.C. 3304, note), an ill individual may receive UC only if no suitable work is rejected. The EB program provides additional weeks of compensation to individuals who have exhausted their rights to regular compensation during times of high

unemployment and contains a specific "work search" requirement. This work search requirement is suspended for EB claimants who are hospitalized for an emergency or life-threatening condition (20 CFR 615.8 (g)(3)(i)(B)). This suspension is permitted only if the State law contains a similar provision to those explained above, which must be consistent with the Federal able and available requirements.

Jury Duty. The DOL accepts that States may pay UC to individuals serving on jury duty consistent with the Federal availability requirement. This is reasonable because individuals are compelled under the threat of contempt of court by the judicial branch of the government to go on jury duty, and attendance at jury duty may be taken as evidence that the employee would otherwise be available for work. It would be inconsistent for the State to compel jury service and at the same time disqualify unemployed persons from UC for complying. Most employment is not considered an excuse for avoiding jury duty, and unemployment would also likely not be an excuse from jury duty. Indeed, EB claimants are exempt from the work search provision while on jury duty (20 CFR 615.8(g)(3)(i)(A)).

Temporary Layoffs. In a temporary layoff, the employer is unable to provide work for a short period of time, but both the employer and the employee have the expectation that the employee will return to work on a specific date. When the employer recalls the employee, the employee must accept or be denied UC. In these cases, the availability requirement is essentially limited to the employer who laid off the employee.

This recognizes that such employees are frequently career employees who would likely quit a new job to return to their former employer when the layoff ends; therefore, other employers would not likely hire such employees.

B. The Birth and Adoption Unemployment Compensation (BAA-UC) Experiment

(1) Able and Available Requirements for BAA-UC

The DOL previously exercised its authority to interpret the able and available requirements in the areas of training, illness, jury duty, and temporary layoffs. Based on this precedent, the DOL's experimental BAA-UC program is designed to test whether expansion of its interpretation of the able and available requirements would promote a continued connection to the workforce in parents who receive such payments.

As the number of mothers in the workforce and families with both parents working rises, the need to test this interpretation increases, and collecting data under the BAA-UC program to test the existence and magnitude of this group's connection to the work force, is increasingly important. Indeed, much in the same way that providing training to laid-off employees enhances their connection to the workforce by making them more marketable, the DOL wants to test whether providing parents with BAA-UC at a point during the first year of a newborn's life, or after placement for adoption, will help employees maintain or even promote their connection to the workforce by allowing them time to bond with their children and to develop stable child care systems while adjusting to the accompanying changes in lifestyle before returning to work.

The initial time period during which a new child is introduced into a home, and how that child's care will be assimilated into the working lives of the parents, is critical. It is during this period that secure emotional bonds are formed between children and their parents. It is also during this period that a system of child care, which will foster the parents' availability for work, can be firmly established. These requirements are universal when any working family has a new child. Addressing these needs is fundamental to helping families flourish and is also connected to sustaining a stable workforce. Where parents continue to work after the arrival of children, they often need the opportunity to bond with their child as well as arrange a system of care that will allow the parents to continue, and indeed strengthen, their attachment to the workforce.

For all the above reasons, the DOL believes that these parents are an appropriate focus of an experimental extension to the able and available requirements. Thus, this expanded interpretation of the Federal able and available requirements applies only to experimental BAA-UC and does not extend to any other facet of the Federal-State UC program. BAA-UC is an experiment being conducted within the regular UC program.

(2) Experimental versus Permanent Program

This proposed rule will give the State agencies that administer the UC program the opportunity to provide UC, under an experimental program, to parents who take approved leave or otherwise leave their employment to be with a newborn or newly-adopted child. The DOL chose to proceed with an experimental rather than a permanent

program in order to compile the necessary information to evaluate the following prior to any implementation of a permanent program: whether individuals compensated for birth and adoption leave are more likely to return to employment, and, therefore, are more available than those who are uncompensated; the effects on employers whose employees take such compensated leave; the effects on employers throughout a State who bear the BAA-UC costs; and the effects on the State's unemployment fund. The DOL anticipates that creating this experimental program, which States can voluntarily choose to put into practice, will give States the necessary latitude to develop innovative programs permitting the DOL to measure employees' connections to the workforce after availing themselves of BAA-UC, as compared to individuals who take unpaid leave or none at all.

(3) Experimental Program Limitations

The purpose of the able and available requirements is to assure sufficient attachment to the workforce. The BAA-UC experimental program is designed to test the proposition that providing UC to the parents of newborns and newly-adopted children who wish to take approved leave or otherwise leave their employment will increase their attachment to the workforce. In order to gain information on the impact of adapting the UC program to address the needs of such employees, the DOL is defining the experimental program to cover the parents of newborns and newly-adopted children. The DOL believes that authorizing States to provide unemployment compensation for parents of newborns and newly-adopted children will produce valuable information for evaluating the program. This information may also serve as a basis for further expanding coverage

to assist a broader group of employees to better balance work and family needs. The class of employees covered by this proposed rule is a small, easily-defined group that can be used to test whether compensating absences from employment will assist individuals to maintain, or even improve upon, their connection to the workforce by enabling them to better meet their parental and family needs.

(4) Experimental Program Time Frame and Evaluation

States may enact legislation and begin operation of a BAA-UC program any time after the effective date of the Final Rule. States wishing to enact legislation prior to completion of the rulemaking process should have a contingency provision in their legislation allowing for State agencies to make changes necessary to comply with Federal regulations prior to the implementation of their programs.

The DOL will begin collecting administrative data immediately upon implementation of a BAA-UC program. As States gain experience with their programs, the DOL will evaluate each State individually. A comprehensive evaluation will be performed when at least four States have implemented legislation and operated a BAA-UC program for a minimum of three years.

The Federal evaluation methodology has not yet been completed. Because States will have broad latitude in developing BAA-UC experimental programs, the DOL may use a case study evaluation design. Some of the issues that may be addressed in the

evaluation include: whether workforce attachment for this population changed; whether employees faced barriers to taking advantage of BAA-UC; and, if so, what can be done to break down these barriers. Though not required by these regulations, it is anticipated that each State will include, as part of its system development, an evaluation component. Once decisions have been made regarding the Federal evaluation process and how the relevant information will be collected, complete information collection instructions will be issued and, if subject to the Paperwork Reduction Act, published for public comment in the Federal Register.

C. Rule Format

In keeping with the Administration's commitment to writing regulations in plain English, the substance and format of this Proposed Rule is presented in a question-and-answer format so that the regulations will be clear and easy to understand. In addition, the DOL has attempted to anticipate and address issues that may arise during this effort.

II. Explanation

DOL is proposing a rule which is not overly prescriptive. This is consistent with the general structure of the UC program under which States have wide latitude in designing their programs.

In accordance with the May 24, 1999, Executive Memorandum, BAA-UC model State legislation has been developed and is appended (Appendix A) for comment. This

model legislation is optional and is provided for the convenience of States that choose to implement a BAA-UC program. A commentary on the model legislation and policy issues to aid States in the development of methods provided for under the proposed rule is also appended (Appendix B) for comment. Both appendices are subject to change based upon comments. They will be issued in final form in the Federal Register as a program letter and will not appear in the Code of Federal Regulations.

Description of the Regulation

The proposed rule adds Part 604 to the Code of Federal Regulations. Subparts are organized by subject matter:

Subpart A discusses the purpose and scope of the regulation and defines critical terms.

Subpart B discusses Federal UC requirements as they relate to this experiment.

Subpart C discusses BAA-UC eligibility requirements.

Following is a brief description of each subpart of the proposed regulation.

Subpart A—General Provisions

Subpart A discusses the purpose and scope of the regulation and defines critical terms. The purpose of the regulation is to establish the opportunity for the State agencies that administer the UC program to provide UC, under an experimental program, to parents who take approved leave or otherwise leave employment to be with a newborn or

newly-adopted child. This proposal will permit interested States to experiment with methods for allowing this use of the UC program.

The scope of the BAA-UC experiment extends to all State UC programs that provide UC to parents who take approved leave or otherwise leave their employment to be with their newborns or newly-adopted children. This group was identified by the President as the focal group for the experiment with possible expansion, if warranted, after the experiment has been evaluated. State participation is completely voluntary.

Definitions of terms specific to BAA-UC are also in Subpart A:

Approved Leave—Because “approved leave” is commonly interpreted as an approved, temporary separation from a specific employer, that definition has been adopted for BAA-UC purposes.

Birth and Adoption unemployment compensation—This is UC paid only to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

Newborns—To establish the distinguishing characteristics of the experimental group, it is necessary to define “newborn.” For purposes of the experiment, newborns are defined as children up to one-year old.

Newly-adopted children—Adoptive parents are included in the experiment. Because adopted children may not be newborns, and a comparable measurement period is necessary for all parents included in the BAA-UC experiment, “newly-adopted” refers to

children, regardless of age, who have been placed within the previous 12 calendar months with an adoptive parent(s).

Parents—For BAA-UC experimental purposes, parents are defined as mothers and fathers—biological, legal or having legal custody of a child during the adoption process. The BAA-UC experiment does not include foster parents unless the child has been placed with the foster parents for adoption.

Placement—The adoption process can be lengthy with completion occurring long after a child has been placed with a family. Consequently, for BAA-UC comparability between parents of newborns and parents of newly-adopted children, “placement” for BAA-UC purposes will be the time a parent becomes legally responsible for a child pending adoption.

Subpart B—Federal UC Requirements

Subpart B discusses how the Federal UC requirements apply to BAA-UC. Beyond the proposed interpretation of the able and available requirements, this regulation does not change Federal UC requirements. Under its authority to interpret the statutes it administers, the DOL is interpreting the Federal able and available requirements to include BAA-UC. This interpretation will give States the opportunity to experiment with, and demonstrate methods of, providing BAA-UC to parents of newborns and newly-adopted children. The experiment will provide compensation only during the periods when parents take approved leave or otherwise leave employment following the

birth or placement for adoption of their child. This interpretation of the Federal able and available requirements applies only for purposes of this experiment.

Subpart C—BAA-UC Eligibility

Subpart C discusses the BAA-UC eligibility requirements. Although implementation of BAA-UC is entirely at State discretion and States have wide latitude in BAA-UC program development, certain eligibility parameters apply. For example, only parents of newborns or newly-adopted children are included in the experiment. Also, because all Federal UC law requirements must be met and the insurance nature of the UC program must be maintained, the introduction of eligibility factors that are inconsistent with Federal UC law requirements is not permitted under BAA-UC programs. The introduction of eligibility factors unrelated to the fact or cause of unemployment, such as industry, employer size or whether the spouse of a UC recipient also receives (or has received) UC, is inconsistent with Federal law. Specifically, in a 1964 conformity decision involving the State of South Dakota, the Secretary of Labor held that Federal law prohibits the introduction of any eligibility test unrelated to the fact or cause of the individual's unemployment. (See Secretary of Labor's Decision of September 25, 1964, In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954, transmitted by Unemployment Insurance Program Letter No. 787, October 2, 1964.) Therefore, all individuals covered under a State's UC law must be covered for BAA-UC.

For BAA-UC purposes, the first compensable week is the week in which birth or placement for adoption takes place. States are free to determine whether to prorate the weekly compensation amount based on the day of the birth or placement for adoption or whether to fully compensate for that week. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

The purpose of BAA-UC is to provide support to new parents on “leave” from employment to be with their newborns or newly-adopted children. The term “leave” implies that the individual will return to the last employer after a designated period. However, for experimental purposes, the DOL will allow States to pay BAA-UC to parents who otherwise leave employment for this purpose. This will generate data for evaluating how providing compensation affects the connection of these individuals to the workforce. The DOL’s view is that limiting BAA-UC to only those individuals who are assured of job retention could be seen as unfairly excluding parents from BAA-UC who are denied leave by their employers.

Executive Order 12866

This proposed rule is a “significant regulatory action” within the meaning of Executive Order 12866 because it meets the criteria of Section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, the proposed rule has been submitted to, and reviewed by, the Office of Management and Budget.

However, the proposed rule is not considered an “economically significant” rule because it will not have an annual effect on the economy of \$100 million or more, will not adversely impact a specific sector of the economy, and will not materially alter the budgeting impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof.

The Department estimates that the possible annual aggregate BAA-UC cost could range from zero to approximately \$68 million. The regulation is permissive, and the DOL does not know how many States will choose to enact experimental BAA-UC programs. The estimate of the annual aggregate BAA-UC cost of \$68 million is based on the expressed interest of a small number of States. The cost depends upon such factors as the extent to which BAA-UC affects parents’ incentives to increase their leave duration and the percentage of leave-takers applying for BAA-UC. The derivation of this estimate begins with 1997-98 Current Population Survey data showing the annual U.S. average number of women in the labor force with a child under one-year old. After this number is disaggregated by State, the likely proportion of leave-takers for newborns and newly-adopted children is determined based on percentages provided in a report by the Commission on Family and Medical Leave, titled *A Workable Balance: Report to Congress on Family and Medical Leave Policies* (April 30, 1996). Other factors used in determining the cost estimate include the percent of leave-takers with employer-paid leave, monetary eligibility rates, and average weekly UC payments.

Further, the DOL has evaluated the proposed rule and found it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. Although the proposed rule will impact States and State agencies, it will not adversely affect them in a material way. The proposed rule would permit States to voluntarily establish experimental programs to determine the effectiveness of using the UC program to support parents taking leave from their employment to be with their newborns or adopted children; it would not impose any new requirements on States.

Paperwork Reduction Act

The DOL has determined that this proposed rule contains no information collection requirements.

Executive Order 12612

These proposed regulations have been reviewed in accordance with Executive Order 12612 regarding federalism. The order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict States' policy options, and take such action only when there is clear constitutional authority and the presence of a problem of national scope. Since this proposed rule does not limit State policy options under the current UC program, it complies with the principles of federalism and with Executive Order 12612.

Executive Order 12988

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The proposal has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 et seq.) and Executive Order 12875. The DOL has determined that this proposal does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

The States have full discretion to decide whether or not to enact a BAA-UC program. See the section entitled "Executive Order 12866" for further information on the BAA-UC cost estimate.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal affects States and State agencies, which are not within the definition of "small entity" under 5 U.S.C. 601(6). Moreover, States have

complete discretion in deciding whether or not they will enact a program permitted under this proposed regulation. Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a “major rule” as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Chapter 8). This proposed rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based entities to compete with foreign-based entities in domestic and export markets.

Effect on Family Life

The DOL certifies that this proposed rule has been assessed in accordance with section 654 of Pub. L. 105-277, 112 Stat. 2681, for its effect on family well-being. The DOL concludes that the proposed rule will not adversely affect the well-being of the nation’s families. Rather, it should have a positive effect on family well-being by permitting States to enable more parents to take leave from their employment to be with their newborns or newly-adopted children.

List of Subjects in 20 CFR Part 604

Employment and Training Administration, Labor, and Unemployment Compensation.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

Signed at Washington, D.C. on _____, 1999.

ALEXIS M. HERMAN

Secretary of Labor

Words of Issuance

For the reasons set forth in the preamble, the DOL proposes that Chapter V of Title 20, Code of Federal Regulations, be amended by adding new part 604 to read as follows:

Part 604—REGULATIONS FOR BIRTH AND ADOPTION UNEMPLOYMENT
COMPENSATION

Subpart A—General Provisions

Sec.

§604.1 What is the purpose of this regulation?

§604.2 What is the scope of this regulation?

§604.3 What definitions apply to this regulation?

Subpart B—Federal Unemployment Compensation Program Requirements

§604.10 Beyond the interpretation of the able and available requirements for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

Subpart C—Eligibility

§604.20 Who is covered by Birth and Adoption unemployment compensation?

§604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

§604.22 Are parents who leave employment to be with their newborns or newly-adopted children eligible for Birth and Adoption unemployment compensation, or is it limited only to parents who take approved leave?

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 503(a)(2) and (5); 26 U.S.C. 3304(a)(1) and (4); 26 U.S.C. 3306(h); Secretary's Order No. 4-75 (40 FR 18515); and Secretary's Order No. 14-75 (November 12, 1975).

Subpart A—General Provisions

§604.1 What is the purpose of this regulation?

This regulation allows the States to develop and experiment with innovative methods for paying unemployment compensation to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. States' experiences with Birth and Adoption unemployment compensation will enable the Department of Labor to test whether its interpretation of the Federal "able and available" requirements promotes a continued connection to the workforce in parents who receive such payments.

§604.2 What is the scope of the regulation?

This regulation applies to and permits all State unemployment compensation programs to provide benefits to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. A State's participation is voluntary.

§604.3 What definitions apply to the regulation?

The following definitions apply to this regulation:

(a) *Approved Leave* means a specific period of time, agreed to by both the employee and employer, during which an employee is temporarily separated from employment and after which the employee will return to work for that employer.

(b) *Birth and Adoption unemployment compensation* means unemployment compensation paid only to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

(c) *DOL* means the United States Department of Labor.

(d) *Newborns* means children up to one-year old.

(e) *Newly-adopted children* means children, regardless of age, who have been placed within the previous 12 calendar months with an adoptive parent(s).

(f) *Parents* means mothers and fathers (biological, legal or who have legal custody of a child during the adoption process).

(g) *Placement* means the time a parent becomes legally responsible for a child pending adoption.

(h) *State(s)* means one of the States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

Subpart B--Federal Unemployment Compensation Program Requirements

§604.10 Beyond the interpretation of the able and available requirement for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

No. This regulation does not change the Federal unemployment compensation requirements. Under its authority to interpret Federal unemployment compensation law, the DOL interprets the Federal able and available requirements to include experimental Birth and Adoption unemployment compensation. The regulation applies only to parents who take approved leave or otherwise leave employment to be with their newborns or newly-adopted children.

Subpart C--Eligibility

§604.20 Who is covered by Birth and Adoption unemployment compensation?

If a State chooses to provide Birth and Adoption unemployment compensation, all individuals covered by the State's unemployment compensation law must also be covered for Birth and Adoption unemployment compensation. Just as with current unemployment compensation programs, individuals may not be denied experimental Birth and Adoption unemployment compensation based on facts or causes unrelated to the claimant's unemployment, such as industry, employer size or the unemployment status of a family member. The introduction of such facts or causes would be inconsistent with Federal unemployment compensation law.

§604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

Parents may be eligible for Birth and Adoption unemployment compensation during the one-year period commencing with the week in which their child is born or placed with them for adoption. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

§604.22 Are parents who leave employment to be with their newborns or newly-adopted children eligible for Birth and Adoption unemployment compensation, or is it limited only to parents who take approved leave?

States may limit Birth and Adoption unemployment compensation to parents who take approved leave or may extend Birth and Adoption unemployment compensation to parents who otherwise leave employment to be with their newborns or newly-adopted children. However, the intent of Birth and Adoption unemployment compensation is to support all parents who wish to take time from employment to be with their newborns or newly-adopted children.

The following appendix will not appear in the Code of Federal Regulations.

Model State Legislation

Section _____. Birth and Adoption Unemployment Compensation.

(a) An individual who is on a leave of absence from his or her employer or who left employment to be with the individual's child during the first year of life, or during the first year following placement with the individual for adoption, shall not be denied compensation under Section _____ for voluntarily leaving employment, Section _____ relating to availability for work, Section _____ relating to inability to work, or Section _____ for failure to actively seek work.

(b) Section _____, concerning the reduction of the amount of compensation due to receipt of disqualifying income, shall apply to payments under this section. In addition, the following payments shall cause a reduction in the compensation amount:

(1) any payment from the employer resulting from a birth or adoption described in subsection (a); and

(2) any payment resulting from a birth or adoption described in subsection (a) from a disability insurance plan contributed to by an employer, in proportion to the employer's contribution to such plan.

(c) Compensation is payable to an individual under this section for a maximum of 12 weeks with respect to any birth or placement for adoption.

(d) Each employer shall post at each site operated by the employer, in a conspicuous place, accessible to all employees, information relating to the availability of Birth and Adoption unemployment compensation.

(e) Any compensation paid under this section shall not be charged to the account of the individual employer.

(f) Two years following the effective date of this legislation, the commissioner shall issue a report to the governor and the legislature evaluating the effectiveness of the Birth and Adoption unemployment compensation program.

(g) This section shall be applied consistent with regulations issued by the U.S. Department of Labor.

The following appendix will not appear in the Code of Federal Regulations.

**Commentary on Model State Legislation,
Including Policy Issues**

General

Must States implement a Birth and Adoption unemployment compensation (BAA-UC) program?

No. This program is voluntary for the States. However, implementation of BAA-UC will require some legislation on the part of every State seeking to adopt the program. The Model State Legislation is provided for the convenience of States that wish to implement a BAA-UC program.

Does this regulation enable a State to pay UC for other types of family or medical leave?

No. This regulation enables a State to pay UC to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

Permitting payment of UC for other types of family leave or care would be inconsistent with this experimental program.

Must all employer-paid leave be exhausted before BAA-UC is available?

No. BAA-UC is designed to provide partial wage replacement to parents of newborns or newly-adopted children. The Model State Legislation assumes that any wages paid for the period of employer-provided leave will be deducted. However, States need not deduct these wages from BAA-UC.

Does this regulation impose any solvency requirements upon the States before they enact BAA-UC?

No. The DOL expects that a State will not enact changes without assessing the effect on the solvency of its unemployment fund. Each State has the responsibility to assess the cost to the State's unemployment fund whenever coverage, benefit expansions, or tax changes are considered within the State's UC program. Consequently, DOL expects prudent decision makers in a State to examine the State's solvency position and projected taxes and benefit payments under current law before deciding to enact BAA-UC legislation.

Monetary Qualifications and Benefits

What are the earnings and employment requirements for BAA-UC?

States may establish their own requirements. The Model State Legislation assumes that States will use the same earnings and employment criteria that apply to all other individuals.

What is the weekly benefit amount for individuals eligible for BAA-UC?

States may establish their own weekly benefit amounts. The Model State Legislation assumes that individuals eligible for BAA-UC will receive the same weekly benefit amount as other individuals eligible for UC.

How does the receipt of other income effect payment of BAA-UC ?

States will determine whether BAA-UC will be reduced by other income. Under the Model State Legislation, the amount of BAA-UC will be reduced in the same manner as any other payment of UC as provided under State law. The Model State Legislation also provides for the deduction of any payment from the employer as a result of the birth or placement for adoption, and for the deduction of any disability insurance payment received as a result of the birth or placement for adoption in proportion to the employer's contribution to the disability insurance plan. This provision, which is limited to payments triggered by the same event which triggers BAA-UC, reflects the view that the unemployment fund should not be held responsible when wage replacement is available from other sources, particularly when both payments are financed by the employer. States should examine their laws to determine if all types of appropriate income are, or should be, deductible. For example, some leave payments which are not normally deductible under State law may cover costs of birth and adoption leave.

How does the BAA-UC entitlement relate to regular UC payments?

States are free to determine this. The Model Legislation assumes that BAA-UC counts toward the maximum number of weeks of regular UC.

Period of Eligibility**When may BAA-UC benefits begin?**

Under Section 604.21 of the proposed regulations, parents may receive BAA-UC only during the one-year period commencing with the week in which the child is born or placed for adoption. For example, an individual taking leave in the 51st week following birth or placement for adoption, would be eligible for BAA-UC only for weeks 51 and 52. Periods preceding the week of birth or placement for adoption are not compensable. States are free to reduce the one-year period.

How many weeks of BAA-UC may individuals receive?

States are free to determine this. The Model State Legislation provides a maximum duration of 12 weeks per individual with respect to any one birth or adoption. Since the Family and Medical Leave Act of 1993 (FMLA) allows up to 12 weeks of unpaid leave for such events, States may wish to have an identical amount. States may also relate the duration of leave to the individual's weekly amount of UC. For example, for each birth or adoption, an individual may receive an amount equal to 12 times the individual's weekly UC.

To prevent confusion between FMLA and BAA-UC, States should inform potential BAA-UC beneficiaries of the dissimilarities between the two programs (for example, BAA-UC does not guarantee job retention).

If a child is born in the middle of the week or the placement occurs in the middle of the week, is BAA-UC payable for this week?

Under the Model State Legislation, BAA-UC would be payable for this week, assuming all applicable eligibility conditions, such as the deductible income provisions, are met. States may provide the full weekly compensation amount for this week or prorate the weekly amount to reflect only periods following birth or adoption. If the amount is prorated, the State may pay the remaining balance for the last partial week if the individual is still on leave.

Must the individual serve a waiting period?

No. Nothing in Federal law requires States to have a waiting week for regular UC or BAA-UC. However, not having a waiting week for BAA-UC would eliminate the 50 percent Federal share for the first week of *all* Extended Benefits claims. Under 20 CFR 615.14(c)(3), a State is not entitled to a Federal share for the first week of Extended Benefits if the State's law provides "at any time or under any circumstances" for the payment of UC for the first week of unemployment.

When is a child considered “placed” for adoption?

Under 604.3(g) of the proposed rule, placement occurs at the time a parent becomes legally responsible for a child pending adoption. State UC agencies should consult the adoption laws of their States to determine precisely when placement occurs.

Other Eligibility Issues

May both parents receive BAA-UC? If so, may they both receive such compensation at the same time?

The answer to both questions is “yes.” States implementing BAA-UC must allow both parents, if otherwise eligible, to receive BAA-UC concurrently or consecutively. A State may not prohibit payment of BAA-UC simply because the other parent is taking leave for the same purpose. A State law which does so is inconsistent with Federal law because the eligibility of one parent will be determined based on whether the other parent is receiving UC. Specifically, in a 1964 conformity decision involving the State of South Dakota, the Secretary of Labor held that Federal law prohibits the introduction of any eligibility test unrelated to the fact or cause of the individual’s unemployment. (See Secretary of Labor’s Decision of September 25, 1964, In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954, transmitted by Unemployment Insurance Program Letter No. 787, October 2, 1964.) The recipient status of the other parent is unrelated to the fact

or cause of an individual's unemployment. Thus, both parents may receive BAA-UC, whether concurrently or consecutively. Similarly, States may not limit use of BAA-UC to the "primary" parent.

Must BAA-UC apply to individuals employed by all employers subject to State UI law?

Yes. As explained in the previous answer, States may not impose eligibility conditions not related to the fact or cause of the individual's unemployment. Assuming the services are taxable for UC, States may not, for example, limit BAA-UC based on employer size.

May States provide BAA-UC to individuals who otherwise leave employment (not on approved leave) to be with their newborns or newly-adopted children?

Yes. While States are free to determine their own requirements, there are compelling reasons for providing BAA-UC to individuals who otherwise leave employment.

Although many employers may grant leave, others may not. The DOL believes that all parents should be treated identically for UC purposes when they take time away from employment to be with their newborn or newly-adopted child. As such, their eligibility for BAA-UC should not be based on whether an employer is required to grant the leave, but on the parent's reason for wanting to take the leave.

May eligibility be conditioned on whether the individual gave notice to the employer?

Yes. Although the Model State Legislation does not provide for such a condition because it may result in denials due to the technicality of when the individual requested leave, States may impose it. The basis of such a requirement is that employers should be given sufficient time to accommodate the leaving/absence of the individual. If such a provision is included, the DOL recommends that the notice be required to be given no more than 30 days prior to birth or placement, but only where practicable. The FMLA contains a 30-day requirement or shorter notice period where giving 30-day notice is not practicable; it does not require notice when the necessity to take leave is unforeseeable. (Section 102(e), Family and Medical Leave Act, Pub. L. 103-3 (February 5, 1993).)

May eligibility be conditioned on whether the individual chooses not to return to work?

Yes. However, based upon Jenkins v. Bowling, 691 F.2d 1225 (7th Cir. 1982), States may not delay payment until after the individual returns to work. Section 303(a)(1), SSA, requires the full payment of benefits when due, precluding States from delaying payment while awaiting the individual's return to work. A State may, however, declare an overpayment of benefits after the individual fails to return to work.

May an individual be paid BAA-UC under the Federal-State extended benefit program or any of the federally funded unemployment programs?

It depends on the program. Benefits under the UC for Federal Employees (UCFE) and UC for Ex-Servicemembers (UCX) programs are, by Federal law, required to be paid on the same terms and subject to the same conditions as State benefits (with exceptions not relevant here). Therefore, BAA-UC will be paid to individuals under these programs to the same extent as under State law.

Individuals may only receive Disaster Unemployment Assistance (DUA) when their unemployment is caused by a disaster as provided in 20 CFR Part 625. However, if they meet their State's Birth and Adoption UC provisions, then they will satisfy the availability requirement at §625.4(g), and so may qualify for DUA. For example, an individual who is unemployed due to a major disaster may later give birth. If this individual satisfies the BAA-UC requirements in the State's law, she may receive DUA.

Extended Benefit claimants may not receive Birth and Adoption UC since they cannot meet the systematic and sustained work search requirements in 20 CFR 615.8(g).

Individuals claiming trade readjustment allowances (cash benefits) under the Trade Adjustment Assistance and the North American Free Trade Act Transitional Adjustment

Assistance programs will be ineligible since such individuals are required to either be in full-time training or conduct the systematic and sustained work search required for the Extended Benefit program.

Financing costs of BAA-UC

May BAA-UC costs be socialized among employers?

Yes. States are free to socialize or not socialize costs of BAA-UC. The Model State Legislation socializes costs—also called “noncharging.” An employer may be reluctant to bear all the costs of BAA-UC caused by an employee taking leave since the employer will not have caused the individual’s unemployment. Since noncharging is permitted when the unemployment is caused by the employee, it is permitted in this situation. This position applies to both contributory and reimbursable employers.

May BAA-UC costs be paid from a State fund other than the State’s unemployment fund, for example, a State’s temporary disability (TDI) fund?

Yes. Nothing in Federal UC law governs the treatment of moneys in these funds because they are financed by a separate tax and held separately from the State’s unemployment fund. For example, a State with a TDI program may enact a special disability insurance tax on employers and deposit the proceeds in a disability fund. If the State chooses to use one of these funds (or create such a fund) to pay birth and adoption leave benefits, the requirements of DOL’s BAA-UC regulation will not apply.

Administrative Costs

May States use administrative grants received from the Federal government to pay for the administration of a BAA-UC program?

Provided that all the requirements of the BAA-UC regulation are met, the use of administrative grants is permissible, including for purposes of studying and evaluating the BAA-UC program. However, if the regulation's requirements are not met, the expenditures of grant funds are not for the proper and efficient administration of the State's law as required by section 303(a)(8) of the Social Security Act.

Reporting

Will States need to amend their laws to address any Federal reporting requirements concerning BAA-UC?

Although this is a matter for States to determine, the DOL anticipates that few, if any, States will need to amend their laws since most State laws already contain language concerning reporting. Many of these laws are based on the language on page 95 of The Manual of Employment Security Legislation, as revised September 1950, which requires that the agency "make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports."

What are the reporting requirements?

The DOL has not yet finalized a methodology for evaluating State BAA-UC programs.

When that methodology is completed, State reporting requirements will be issued in a separate information collection request and, if subject to the Paperwork Reduction Act, published for public comment in the Federal Register.



Karin Kullman

11/29/99 09:03:32 PM

Record Type: Record

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Subject: Advocates Attending Paid Leave Statement

PARENTAL LEAVE STATEMENT ATTENDEES

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National Partnership for Women and Families

Maurice Emsellem
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DEPARTMENT OF LABOR

4510-30

Employment and Training Administration

20 CFR Part 604

RIN 1205-AB21

Birth and Adoption Unemployment Compensation

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Labor (DOL) is issuing for comment a Notice of Proposed Rulemaking to create, by regulation, an opportunity for State agencies that administer the Unemployment Compensation (UC) program to pay, under a voluntary experimental program, UC to parents who take time off from employment after the birth or placement for adoption of a child. This effort responds to the President's Executive Memorandum issued May 24, 1999, directing the Secretary of Labor to allow States the opportunity to develop innovative ways of using UC to support parents taking leave to be with their newborns or newly-adopted children and to evaluate the effectiveness of using the UC system for these or related purposes. This regulation will permit interested States to experiment with methods for allowing the use of the UC program for this purpose.

DATES: DOL invites written comments on this proposal. Comments are to be submitted by *[insert date 45 days after date of publication in the Federal Register]*.

ADDRESSES: Submit written comments to Grace A. Kilbane, Director, Unemployment Insurance Service, Employment and Training Administration (ETA), U.S. Department of

Labor, 200 Constitution Avenue, N.W., Room S-4231, Washington, DC 20210. Prior to issuance of this Notice of Proposed Rulemaking, the DOL received correspondence on the subject matter of the proposal. This correspondence, along with correspondence received in response to the Notice of Proposed Rulemaking, will be made part of the rulemaking record and will be considered in the development of a final rule.

FOR MORE INFORMATION CONTACT: Gerard Hildebrand, Unemployment Insurance Service, ETA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4231, Washington, DC 20210. Telephone: (202) 219-5200 ext. 391 (this is not a toll-free number); facsimile: (202) 219-8506.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Overview

(1) *Need for Birth and Adoption Leave*

On May 23, 1999, the President directed the Secretary of Labor to issue a regulation allowing unemployment fund moneys to be used to provide partial wage replacement to mothers and fathers on leave following the birth or adoption of a child. In discussing the importance of providing partial wage replacement, the President stated: “[T]hose first weeks of life are critical to the bonding of parents and children, and they can have long-term positive developments for the children. No parent should have to miss them.” The President also noted that, “We can do this in a way that preserves the

soundness of the unemployment insurance system and continues to promote economic growth.”

The President elaborated on this Birth and Adoption UC proposal in a May 24, 1999, memorandum to the heads of executive departments:

First, I hereby direct the Secretary of Labor to propose regulations that enable States to develop innovative ways of using the Unemployment Insurance (UI) system to support parents on leave following the birth or adoption of a child. In addition, I direct the Secretary to develop model State legislation that States could use in following these regulations. In this effort, the Department of Labor is to evaluate the effectiveness of using the system for these or related purposes. In a 1996 study conducted by the Commission on Family and Medical Leave, lost pay was the most significant barrier to parents taking advantage of unpaid leave after the birth or adoption of a child. This new step will help to give States the ability to eliminate a significant barrier that parents face in taking leave.

In response to the President’s May 24, 1999, Executive Memorandum, the DOL is exercising its authority to interpret Federal UC statutes, and, in particular the statutes’ longstanding “able and available” requirements, by implementing an experimental program to examine the use of the UC program as a means for providing partial wage replacement to employees who desire to take approved leave or otherwise leave their employment following the birth or placement for adoption of a child.

(2) The Federal-State UC System

The Federal-State UC program is administered as a partnership of the Federal government and the States. States collect State UC taxes used to pay compensation while the Federal government collects taxes, used for grants for State UC administration, under the Federal Unemployment Tax Act (FUTA). (The FUTA is codified at 26 U.S.C. 3301 - 3311.) The DOL has broad oversight responsibility for the Federal-State UC program, including determining whether a State law conforms and its practices substantially comply with the requirements of Federal UC law. If a State's law conforms and its practices substantially comply with the requirements of the FUTA, then the Secretary of Labor issues certifications enabling employers in the State to receive credit against the Federal unemployment tax as provided under section 3302, FUTA. If a State and its law are certified under the FUTA, and the State's law conforms and its practices substantially comply with the requirements of Title III of the Social Security Act (SSA), then the State receives grants for the administration of its UC program. (Title III of the SSA is codified at 42 U.S.C. 501 - 504.) The DOL enforces Federal UC law requirements through the FUTA credit and grant certification processes.

(3) Ability to Work and Availability for Work

The DOL has the authority and responsibility to interpret the provisions of Federal UC law such as the "able and available" requirements. Although no explicit able and available requirements are stated in Federal law, the DOL and its predecessors (the Social Security Board and the Federal Security Agency) interpreted four provisions of Federal UC law as requiring that claimants be able to and available for work. Two of

these provisions at section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a State's unemployment fund to the payment of "compensation." Section 3306(h), FUTA, defines "compensation" as "cash benefits payable to individuals with respect to their unemployment." The able and available requirements provide a test of a claimant's "unemployment."

The other two provisions found in section 3304(a)(1), FUTA, and section 303(a)(2), SSA, require that compensation "be paid through public employment offices."

The requirement that UC is to be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to an individual's search for employment and to his or her ability to work and availability for work.

Agencies administering the Federal-State UC program have for over 60 years interpreted these four statutory provisions to require a participating State to have able and available requirements.

In response to practical economic and societal concerns, the DOL has previously, as discussed below, exercised its authority to interpret Federal UC statutes regarding the able and available requirements to address several specific areas: training, illness, jury duty and temporary layoffs. Under its authority to interpret Federal UC law and consistent with its broad oversight responsibility, the DOL interprets the Federal able and available requirements to include a voluntary experimental program for examining the use of the UC program to provide partial wage replacement to employees who take

approved leave or otherwise leave employment to be with their newborns or newly-adopted children. This experiment recognizes the impact of women in the workforce and responds to the dramatic societal and economic changes resulting from the large number of families where both parents work. It should allow parents of newborns and newly-adopted children to strengthen their availability for work by providing them with the time and financial support to address several vital needs that accompany the introduction of a new child into the family. The program would allow such parents to provide the initial care that the child will need, to form a strong emotional bond with the child, and to establish a secure system of child care that, once in place, will promote the parents' long-term attachment to the workforce.

(4) Minimal Tests of the Able and Available Requirements

Consistent with DOL interpretations, some States have imposed minimal tests of the able and available requirements for specific situations, provided the claimant has demonstrated an attachment to the labor force.

Approved Training. Prior to incorporating the training provision into the Federal laws, the DOL encouraged States to treat individuals in training approved by the State agency as meeting the able and available requirements since such training represents the most effective step available to the individual to return to work. The DOL cautioned that State agencies should only approve short-term training that would make individuals job ready. In 1970, Congress, recognizing the importance of training in remedying unemployment, made this training provision mandatory for all States. (Section 3304 (a)(8),

FUTA.) The Federal able and available requirements are preserved because individuals who fail to attend training, except by specific waiver, are held to be unavailable for work and ineligible for UC.

Illness. Eleven States allow an individual who initially meets the able and available requirements, but then becomes ill, to receive UC payments without interruption, provided that no suitable work is offered and refused. The DOL approved such State laws in an effort to deter disqualification for UC where a claimant was not “able and available” for perhaps one day, or even one hour, out of a week. Two States, Alaska and Massachusetts, cap the number of weeks ill claimants can collect UC at six weeks and three weeks, respectively; the other States have no statutory limitations. The Federal able and available requirements are preserved because claimants must initially demonstrate their ability to and availability for work before the illness and must be held ineligible if they refuse an offer of suitable work.

Similarly, under the Federal-State Extended Unemployment Compensation Act of 1970 (EB)(26 U.S.C. 3304, note), an ill individual may receive UC only if no suitable work is rejected. The EB program provides additional weeks of compensation to individuals who have exhausted their rights to regular compensation during times of high unemployment and contains a specific “work search” requirement. This work search requirement is suspended for EB claimants who are hospitalized for an emergency or life-threatening condition (20 CFR 615.8 (g)(3)(i)(B)). This suspension is permitted only if

the State law contains a similar provision to those explained above, which must be consistent with the Federal able and available requirements.

Jury Duty. The DOL accepts that States may pay UC to individuals serving on jury duty consistent with the Federal availability requirement. This is reasonable because individuals are compelled under the threat of contempt of court by the judicial branch of the government to go on jury duty, and attendance at jury duty may be taken as evidence that the employee would otherwise be available for work. It would be inconsistent for the State to compel jury service and at the same time disqualify unemployed persons from UC for complying. Most employment is not considered an excuse for avoiding jury duty, and unemployment would also likely not be an excuse from jury duty. Indeed, EB claimants are exempt from the work search provision while on jury duty (20 CFR 615.8(g)(3)(i)(A)).

Temporary Layoffs. In a temporary layoff, the employer is unable to provide work for a short period of time, but both the employer and the employee have the expectation that the employee will return to work on a specific date. When the employer recalls the employee, the employee must accept or be denied UC. In these cases, the availability requirement is essentially limited to the employer who laid off the employee. This recognizes that such employees are frequently career employees who would likely quit a new job to return to their former employer when the layoff ends; therefore, other employers would not likely hire such employees.

B. The Birth and Adoption Unemployment Compensation (BAA-UC) Experiment

(1) Able and Available Requirements for BAA-UC

The DOL previously exercised its authority to interpret the able and available requirements in the areas of training, illness, jury duty, and temporary layoffs. Based on this precedent, the DOL's experimental BAA-UC program is designed to test whether expansion of its interpretation of the able and available requirements would promote a continued connection to the workforce in parents who receive such payments.

As the number of mothers in the workforce and families with both parents working rises, the need to test this interpretation increases, and collecting data under the BAA-UC program to test the existence and magnitude of this group's connection to the work force, is increasingly important. Indeed, much in the same way that providing training to laid-off employees enhances their connection to the workforce by making them more marketable, the DOL wants to test whether providing parents with BAA-UC at a point during the first year of a newborn's life, or after placement for adoption, will help employees maintain or even promote their connection to the workforce by allowing them time to bond with their children and to develop stable child care systems while adjusting to the accompanying changes in lifestyle before returning to work.

The initial time period during which a new child is introduced into a home, and how that child's care will be assimilated into the working lives of the parents, is critical. It is during this period that secure emotional bonds are formed between children and their parents. It is also during this period that a system of child care, which will foster the parents' availability for work, can be firmly established. These requirements are univer-

sal when any working family has a new child. Addressing these needs is fundamental to helping families flourish and is also connected to sustaining a stable workforce. Where parents continue to work after the arrival of children, they often need the opportunity to bond with their child as well as arrange a system of care that will allow the parents to continue, and indeed strengthen, their attachment to the workforce.

For all the above reasons, the DOL believes that these parents are an appropriate focus of an experimental extension to the able and available requirements. Thus, this expanded interpretation of the Federal able and available requirements applies only to experimental BAA-UC and does not extend to any other facet of the Federal-State UC program. BAA-UC is an experiment being conducted within the regular UC program.

(2) Experimental versus Permanent Program

This proposed rule will give the State agencies that administer the UC program the opportunity to provide UC, under an experimental program, to parents who take approved leave or otherwise leave their employment to be with a newborn or newly-adopted child. The DOL chose to proceed with an experimental rather than a permanent program in order to compile the necessary information to evaluate the following prior to any implementation of a permanent program: whether individuals compensated for birth and adoption leave are more likely to return to employment, and, therefore, are more available than those who are uncompensated; the effects on employers whose employees take such compensated leave; the effects on employers throughout a State who bear the BAA-UC costs; and the effects on the State's unemployment fund. The DOL anticipates

that creating this experimental program, which States can voluntarily choose to put into practice, will give States the necessary latitude to develop innovative programs permitting the DOL to measure employees' connections to the workforce after availing themselves of BAA-UC, as compared to individuals who take unpaid leave or none at all.

(3) Experimental Program Limitations

The purpose of the able and available requirements is to assure sufficient attachment to the workforce. The BAA-UC experimental program is designed to test the proposition that providing UC to the parents of newborns and newly-adopted children who wish to take approved leave or otherwise leave their employment will increase their attachment to the workforce. In order to gain information on the impact of adapting the UC program to address the needs of such employees, the DOL is defining the experimental program to cover the parents of newborns and newly-adopted children. The DOL believes that authorizing States to provide unemployment compensation for parents of newborns and newly-adopted children will produce valuable information for evaluating the program. This information may also serve as a basis for further expanding coverage to assist a broader group of employees to better balance work and family needs. The class of employees covered by this proposed rule is a small, easily-defined group that can be used to test whether compensating absences from employment will assist individuals to maintain, or even improve upon, their connection to the workforce by enabling them to better meet their parental and family needs.

(4) Experimental Program Time Frame and Evaluation

States may enact legislation and begin operation of a BAA-UC program any time after the effective date of the Final Rule. States wishing to enact legislation prior to completion of the rulemaking process should have a contingency provision in their legislation allowing for State agencies to make changes necessary to comply with Federal regulations prior to the implementation of their programs.

The DOL will begin collecting administrative data immediately upon implementation of a BAA-UC program. As States gain experience with their programs, the DOL will evaluate each State individually. A comprehensive evaluation will be performed when at least four States have implemented legislation and operated a BAA-UC program for a minimum of three years.

The Federal evaluation methodology has not yet been completed. Because States will have broad latitude in developing BAA-UC experimental programs, the DOL may use a case study evaluation design. Some of the issues that may be addressed in the evaluation include: whether workforce attachment for this population changed; whether employees faced barriers to taking advantage of BAA-UC; and, if so, what can be done to break down these barriers. Though not required by these regulations, it is anticipated that each State will include, as part of its system development, an evaluation component. Once decisions have been made regarding the Federal evaluation process and how the relevant information will be collected, complete information collection instructions will be issued and, if subject to the Paperwork Reduction Act, published for public comment in the Federal Register.

C. Rule Format

In keeping with the Administration's commitment to writing regulations in plain English, the substance and format of this Proposed Rule is presented in a question-and-answer format so that the regulations will be clear and easy to understand. In addition, the DOL has attempted to anticipate and address issues that may arise during this effort.

II. Explanation

DOL is proposing a rule which is not overly prescriptive. This is consistent with the general structure of the UC program under which States have wide latitude in designing their programs.

In accordance with the May 24, 1999, Executive Memorandum, BAA-UC model State legislation has been developed and is appended (Appendix A) for comment. This model legislation is optional and is provided for the convenience of States that choose to implement a BAA-UC program. A commentary on the model legislation and policy issues to aid States in the development of methods provided for under the proposed rule is also appended (Appendix B) for comment. Both appendices are subject to change based upon comments. They will be issued in final form in the Federal Register as a program letter and will not appear in the Code of Federal Regulations.

Description of the Regulation

The proposed rule adds Part 604 to the Code of Federal Regulations. Subparts are organized by subject matter:

Subpart A discusses the purpose and scope of the regulation and defines critical terms.

Subpart B discusses Federal UC requirements as they relate to this experiment.

Subpart C discusses BAA-UC eligibility requirements.

Following is a brief description of each subpart of the proposed regulation.

Subpart A—General Provisions

Subpart A discusses the purpose and scope of the regulation and defines critical terms. The purpose of the regulation is to establish the opportunity for the State agencies that administer the UC program to provide UC, under an experimental program, to parents who take approved leave or otherwise leave employment to be with a newborn or newly-adopted child. This proposal will permit interested States to experiment with methods for allowing this use of the UC program.

The scope of the BAA-UC experiment extends to all State UC programs that provide UC to parents who take approved leave or otherwise leave their employment to be with their newborns or newly-adopted children. This group was identified by the President as the focal group for the experiment with possible expansion, if warranted, after the experiment has been evaluated. State participation is completely voluntary.

Definitions of terms specific to BAA-UC are also in Subpart A:

Approved Leave—Because “approved leave” is commonly interpreted as an approved, temporary separation from a specific employer, that definition has been adopted for BAA-UC purposes.

Birth and Adoption unemployment compensation—This is UC paid only to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

Newborns—To establish the distinguishing characteristics of the experimental group, it is necessary to define “newborn.” For purposes of the experiment, newborns are defined as children up to one-year old.

Newly-adopted children—Adoptive parents are included in the experiment. Because adopted children may not be newborns, and a comparable measurement period is necessary for all parents included in the BAA-UC experiment, “newly-adopted” refers to children, regardless of age, who have been placed within the previous 12 calendar months with an adoptive parent(s).

Parents—For BAA-UC experimental purposes, parents are defined as mothers and fathers—biological, legal or having legal custody of a child during the adoption process. The BAA-UC experiment does not include foster parents unless the child has been placed with the foster parents for adoption.

Placement—The adoption process can be lengthy with completion occurring long after a child has been placed with a family. Consequently, for BAA-UC comparability between parents of newborns and parents of newly-adopted children, “placement” for BAA-UC purposes will be the time a parent becomes legally responsible for a child pending adoption.

Subpart B—Federal UC Requirements

Subpart B discusses how the Federal UC requirements apply to BAA-UC.

Beyond the proposed interpretation of the able and available requirements, this regulation does not change Federal UC requirements. Under its authority to interpret the statutes it administers, the DOL is interpreting the Federal able and available requirements to include BAA-UC. This interpretation will give States the opportunity to experiment with, and demonstrate methods of, providing BAA-UC to parents of newborns and newly-adopted children. The experiment will provide compensation only during the periods when parents take approved leave or otherwise leave employment following the birth or placement for adoption of their child. This interpretation of the Federal able and available requirements applies only for purposes of this experiment.

Subpart C—BAA-UC Eligibility

Subpart C discusses the BAA-UC eligibility requirements. Although implementation of BAA-UC is entirely at State discretion and States have wide latitude in BAA-UC program development, certain eligibility parameters apply. For example, only parents of newborns or newly-adopted children are included in the experiment. Also, because all Federal UC law requirements must be met and the insurance nature of the UC program must be maintained, the introduction of eligibility factors that are inconsistent with Federal UC law requirements is not permitted under BAA-UC programs. The introduction of eligibility factors unrelated to the fact or cause of unemployment, such as industry, employer size or whether the spouse of a UC recipient also receives (or has received)

UC, is inconsistent with Federal law. Specifically, in a 1964 conformity decision involving the State of South Dakota, the Secretary of Labor held that Federal law prohibits the introduction of any eligibility test unrelated to the fact or cause of the individual's unemployment. (See Secretary of Labor's Decision of September 25, 1964, In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954, transmitted by Unemployment Insurance Program Letter No. 787, October 2, 1964.) Therefore, all individuals covered under a State's UC law must be covered for BAA-UC.

For BAA-UC purposes, the first compensable week is the week in which birth or placement for adoption takes place. States are free to determine whether to prorate the weekly compensation amount based on the day of the birth or placement for adoption or whether to fully compensate for that week. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

The purpose of BAA-UC is to provide support to new parents on "leave" from employment to be with their newborns or newly-adopted children. The term "leave" implies that the individual will return to the last employer after a designated period. However, for experimental purposes, the DOL will allow States to pay BAA-UC to parents who otherwise leave employment for this purpose. This will generate data for evaluating how providing compensation affects the connection of these individuals to the workforce. The DOL's view is that limiting BAA-UC to only those individuals who are

assured of job retention could be seen as unfairly excluding parents from BAA-UC who are denied leave by their employers.

Executive Order 12866

This proposed rule is a “significant regulatory action” within the meaning of Executive Order 12866 because it meets the criteria of Section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, the proposed rule has been submitted to, and reviewed by, the Office of Management and Budget.

However, the proposed rule is not considered an “economically significant” rule because it will not have an annual effect on the economy of \$100 million or more, will not adversely impact a specific sector of the economy, and will not materially alter the budgeting impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof.

The Department estimates that the possible annual aggregate BAA-UC cost could range from zero to approximately \$68 million. The regulation is permissive, and the DOL does not know how many States will choose to enact experimental BAA-UC programs. The estimate of the annual aggregate BAA-UC cost of \$68 million is based on the expressed interest of a small number of States. The cost depends upon such factors as the extent to which BAA-UC affects parents’ incentives to increase their leave duration and the percentage of leave-takers applying for BAA-UC. The derivation of this estimate begins with 1997-98 Current Population Survey data showing the annual U.S. average

number of women in the labor force with a child under one-year old. After this number is disaggregated by State, the likely proportion of leave-takers for newborns and newly-adopted children is determined based on percentages provided in a report by the Commission on Family and Medical Leave, titled *A Workable Balance: Report to Congress on Family and Medical Leave Policies* (April 30, 1996). Other factors used in determining the cost estimate include the percent of leave-takers with employer-paid leave, monetary eligibility rates, and average weekly UC payments.

Further, the DOL has evaluated the proposed rule and found it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. Although the proposed rule will impact States and State agencies, it will not adversely affect them in a material way. The proposed rule would permit States to voluntarily establish experimental programs to determine the effectiveness of using the UC program to support parents taking leave from their employment to be with their newborns or adopted children; it would not impose any new requirements on States.

Paperwork Reduction Act

The DOL has determined that this proposed rule contains no information collection requirements.

Executive Order 12612

These proposed regulations have been reviewed in accordance with Executive Order 12612 regarding federalism. The order requires that agencies, to the extent

possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict States' policy options, and take such action only when there is clear constitutional authority and the presence of a problem of national scope. Since this proposed rule does not limit State policy options under the current UC program, it complies with the principles of federalism and with Executive Order 12612.

Executive Order 12988

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The proposal has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 et seq.) and Executive Order 12875. The DOL has determined that this proposal does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

The States have full discretion to decide whether or not to enact a BAA-UC program. See the section entitled "Executive Order 12866" for further information on the BAA-UC cost estimate.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal affects States and State agencies, which are not within the definition of "small entity" under 5 U.S.C. 601(6). Moreover, States have complete discretion in deciding whether or not they will enact a program permitted under

this proposed regulation. Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a “major rule” as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Chapter 8). This proposed rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based entities to compete with foreign-based entities in domestic and export markets.

Effect on Family Life

The DOL certifies that this proposed rule has been assessed in accordance with section 654 of Pub. L. 105-277, 112 Stat. 2681, for its effect on family well-being. The DOL concludes that the proposed rule will not adversely affect the well-being of the nation’s families. Rather, it should have a positive effect on family well-being by permitting States to enable more parents to take leave from their employment to be with their newborns or newly-adopted children.

List of Subjects in 20 CFR Part 604

Employment and Training Administration, Labor, and Unemployment Compensation.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

Signed at Washington, D.C. on _____, 1999.

ALEXIS M. HERMAN

Secretary of Labor

Words of Issuance

For the reasons set forth in the preamble, the DOL proposes that Chapter V of Title 20, Code of Federal Regulations, be amended by adding new part 604 to read as follows:

Part 604—REGULATIONS FOR BIRTH AND ADOPTION UNEMPLOYMENT
COMPENSATION

Subpart A—General Provisions

Sec.

§604.1 What is the purpose of this regulation?

§604.2 What is the scope of this regulation?

§604.3 What definitions apply to this regulation?

Subpart B—Federal Unemployment Compensation Program Requirements

§604.10 Beyond the interpretation of the able and available requirements for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

Subpart C—Eligibility

§604.20 Who is covered by Birth and Adoption unemployment compensation?

§604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

§604.22 Are parents who leave employment to be with their newborns or newly-adopted children eligible for Birth and Adoption unemployment compensation, or is it limited only to parents who take approved leave?

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 503(a)(2) and (5); 26 U.S.C. 3304(a)(1) and (4); 26 U.S.C. 3306(h); Secretary's Order No. 4-75 (40 FR 18515); and Secretary's Order No. 14-75 (November 12, 1975).

Subpart A—General Provisions

§604.1 What is the purpose of this regulation?

This regulation allows the States to develop and experiment with innovative methods for paying unemployment compensation to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. States' experiences with Birth and Adoption unemployment compensation will enable the Department of Labor to test whether its interpretation of the Federal "able and available" requirements promotes a continued connection to the workforce in parents who receive such payments.

§604.2 What is the scope of the regulation?

This regulation applies to and permits all State unemployment compensation programs to provide benefits to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. A State's participation is voluntary.

§604.3 What definitions apply to the regulation?

The following definitions apply to this regulation:

(a) *Approved Leave* means a specific period of time, agreed to by both the employee and employer, during which an employee is temporarily separated from employment and after which the employee will return to work for that employer.

(b) *Birth and Adoption unemployment compensation* means unemployment compensation paid only to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

(c) *DOL* means the United States Department of Labor.

(d) *Newborns* means children up to one-year old.

(e) *Newly-adopted children* means children, regardless of age, who have been placed within the previous 12 calendar months with an adoptive parent(s).

(f) *Parents* means mothers and fathers (biological, legal or who have legal custody of a child during the adoption process).

(g) *Placement* means the time a parent becomes legally responsible for a child pending adoption.

(h) *State(s)* means one of the States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

Subpart B—Federal Unemployment Compensation Program Requirements

§604.10 Beyond the interpretation of the able and available requirement for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

No. This regulation does not change the Federal unemployment compensation requirements. Under its authority to interpret Federal unemployment compensation law, the DOL interprets the Federal able and available requirements to include experimental Birth and Adoption unemployment compensation. The regulation applies only to parents who take approved leave or otherwise leave employment to be with their newborns or newly-adopted children.

Subpart C—Eligibility

§604.20 Who is covered by Birth and Adoption unemployment compensation?

If a State chooses to provide Birth and Adoption unemployment compensation, all individuals covered by the State's unemployment compensation law must also be covered for Birth and Adoption unemployment compensation. Just as with current unemployment compensation programs, individuals may not be denied experimental Birth and Adoption unemployment compensation based on facts or causes unrelated to the claimant's unemployment, such as industry, employer size or the unemployment status of a family member. The introduction of such facts or causes would be inconsistent with Federal unemployment compensation law.

§604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

Parents may be eligible for Birth and Adoption unemployment compensation during the one-year period commencing with the week in which their child is born or placed with them for adoption. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

§604.22 Are parents who leave employment to be with their newborns or newly-adopted children eligible for Birth and Adoption unemployment compensation, or is it limited only to parents who take approved leave?

States may limit Birth and Adoption unemployment compensation to parents who take approved leave or may extend Birth and Adoption unemployment compensation to parents who otherwise leave employment to be with their newborns or newly-adopted children. However, the intent of Birth and Adoption unemployment compensation is to support all parents who wish to take time from employment to be with their newborns or newly-adopted children.

The following appendix will not appear in the Code of Federal Regulations.

Model State Legislation

Section _____. Birth and Adoption Unemployment Compensation.

(a) An individual who is on a leave of absence from his or her employer or who left employment to be with the individual's child during the first year of life, or during the first year following placement with the individual for adoption, shall not be denied compensation under Section _____ for voluntarily leaving employment, Section _____ relating to availability for work, Section _____ relating to inability to work, or Section _____ for failure to actively seek work.

(b) Section _____, concerning the reduction of the amount of compensation due to receipt of disqualifying income, shall apply to payments under this section. In addition, the following payments shall cause a reduction in the compensation amount:

(1) any payment from the employer resulting from a birth or adoption described in subsection (a); and

(2) any payment resulting from a birth or adoption described in subsection (a) from a disability insurance plan contributed to by an employer, in proportion to the employer's contribution to such plan.

(c) Compensation is payable to an individual under this section for a maximum of 12 weeks with respect to any birth or placement for adoption.

(d) Each employer shall post at each site operated by the employer, in a conspicuous place, accessible to all employees, information relating to the availability of Birth and Adoption unemployment compensation.

(e) Any compensation paid under this section shall not be charged to the account of the individual employer.

(f) Two years following the effective date of this legislation, the commissioner shall issue a report to the governor and the legislature evaluating the effectiveness of the Birth and Adoption unemployment compensation program.

(g) This section shall be applied consistent with regulations issued by the U.S. Department of Labor.

The following appendix will not appear in the Code of Federal Regulations.

**Commentary on Model State Legislation,
Including Policy Issues**

General

Must States implement a Birth and Adoption unemployment compensation (BAA-UC) program?

No. This program is voluntary for the States. However, implementation of BAA-UC will require some legislation on the part of every State seeking to adopt the program. The Model State Legislation is provided for the convenience of States that wish to implement a BAA-UC program.

Does this regulation enable a State to pay UC for other types of family or medical leave?

No. This regulation enables a State to pay UC to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. Permitting payment of UC for other types of family leave or care would be inconsistent with this experimental program.

Must all employer-paid leave be exhausted before BAA-UC is available?

No. BAA-UC is designed to provide partial wage replacement to parents of newborns or newly-adopted children. The Model State Legislation assumes that any wages paid for the period of employer-provided leave will be deducted. However, States need not deduct these wages from BAA-UC.

Does this regulation impose any solvency requirements upon the States before they enact BAA-UC?

No. The DOL expects that a State will not enact changes without assessing the effect on the solvency of its unemployment fund. Each State has the responsibility to assess the cost to the State's unemployment fund whenever coverage, benefit expansions, or tax changes are considered within the State's UC program. Consequently, DOL expects prudent decision makers in a State to examine the State's solvency position and projected taxes and benefit payments under current law before deciding to enact BAA-UC legislation.

Monetary Qualifications and Benefits

What are the earnings and employment requirements for BAA-UC?

States may establish their own requirements. The Model State Legislation assumes that States will use the same earnings and employment criteria that apply to all other individuals.

What is the weekly benefit amount for individuals eligible for BAA-UC?

States may establish their own weekly benefit amounts. The Model State Legislation assumes that individuals eligible for BAA-UC will receive the same weekly benefit amount as other individuals eligible for UC.

How does the receipt of other income effect payment of BAA-UC ?

States will determine whether BAA-UC will be reduced by other income. Under the Model State Legislation, the amount of BAA-UC will be reduced in the same manner as any other payment of UC as provided under State law. The Model State Legislation also provides for the deduction of any payment from the employer as a result of the birth or placement for adoption, and for the deduction of any disability insurance payment received as a result of the birth or placement for adoption in proportion to the employer's contribution to the disability insurance plan. This provision, which is limited to payments triggered by the same event which triggers BAA-UC, reflects the view that the unemployment fund should not be held responsible when wage replacement is available from other sources, particularly when both payments are financed by the employer. States should examine their laws to determine if all types of appropriate income are, or should be, deductible. For example, some leave payments which are not normally deductible under State law may cover costs of birth and adoption leave.

How does the BAA-UC entitlement relate to regular UC payments?

States are free to determine this. The Model Legislation assumes that BAA-UC counts toward the maximum number of weeks of regular UC.

Period of Eligibility**When may BAA-UC benefits begin?**

Under Section 604.21 of the proposed regulations, parents may receive BAA-UC only during the one-year period commencing with the week in which the child is born or placed for adoption. For example, an individual taking leave in the 51st week following birth or placement for adoption, would be eligible for BAA-UC only for weeks 51 and 52. Periods preceding the week of birth or placement for adoption are not compensable. States are free to reduce the one-year period.

How many weeks of BAA-UC may individuals receive?

States are free to determine this. The Model State Legislation provides a maximum duration of 12 weeks per individual with respect to any one birth or adoption. Since the Family and Medical Leave Act of 1993 (FMLA) allows up to 12 weeks of unpaid leave for such events, States may wish to have an identical amount. States may also relate the duration of leave to the individual's weekly amount of UC. For example, for each birth or adoption, an individual may receive an amount equal to 12 times the individual's weekly UC.

To prevent confusion between FMLA and BAA-UC, States should inform potential BAA-UC beneficiaries of the dissimilarities between the two programs (for example, BAA-UC does not guarantee job retention).

If a child is born in the middle of the week or the placement occurs in the middle of the week, is BAA-UC payable for this week?

Under the Model State Legislation, BAA-UC would be payable for this week, assuming all applicable eligibility conditions, such as the deductible income provisions, are met. States may provide the full weekly compensation amount for this week or prorate the weekly amount to reflect only periods following birth or adoption. If the amount is prorated, the State may pay the remaining balance for the last partial week if the individual is still on leave.

Must the individual serve a waiting period?

No. Nothing in Federal law requires States to have a waiting week for regular UC or BAA-UC. However, not having a waiting week for BAA-UC would eliminate the 50 percent Federal share for the first week of *all* Extended Benefits claims. Under 20 CFR 615.14(c)(3), a State is not entitled to a Federal share for the first week of Extended Benefits if the State's law provides "at any time or under any circumstances" for the payment of UC for the first week of unemployment.

When is a child considered “placed” for adoption?

Under 604.3(g) of the proposed rule, placement occurs at the time a parent becomes legally responsible for a child pending adoption. State UC agencies should consult the adoption laws of their States to determine precisely when placement occurs.

Other Eligibility Issues

May both parents receive BAA-UC? If so, may they both receive such compensation at the same time?

The answer to both questions is “yes.” States implementing BAA-UC must allow both parents, if otherwise eligible, to receive BAA-UC concurrently or consecutively. A State may not prohibit payment of BAA-UC simply because the other parent is taking leave for the same purpose. A State law which does so is inconsistent with Federal law because the eligibility of one parent will be determined based on whether the other parent is receiving UC. Specifically, in a 1964 conformity decision involving the State of South Dakota, the Secretary of Labor held that Federal law prohibits the introduction of any eligibility test unrelated to the fact or cause of the individual’s unemployment. (See Secretary of Labor’s Decision of September 25, 1964, In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954, transmitted by Unemployment Insurance Program Letter No. 787, October 2, 1964.) The recipient status of the other parent is unrelated to the fact

or cause of an individual's unemployment. Thus, both parents may receive BAA-UC, whether concurrently or consecutively. Similarly, States may not limit use of BAA-UC to the "primary" parent.

Must BAA-UC apply to individuals employed by all employers subject to State UI law?

Yes. As explained in the previous answer, States may not impose eligibility conditions not related to the fact or cause of the individual's unemployment. Assuming the services are taxable for UC, States may not, for example, limit BAA-UC based on employer size.

May States provide BAA-UC to individuals who otherwise leave employment (not on approved leave) to be with their newborns or newly-adopted children?

Yes. While States are free to determine their own requirements, there are compelling reasons for providing BAA-UC to individuals who otherwise leave employment.

Although many employers may grant leave, others may not. The DOL believes that all parents should be treated identically for UC purposes when they take time away from employment to be with their newborn or newly-adopted child. As such, their eligibility for BAA-UC should not be based on whether an employer is required to grant the leave, but on the parent's reason for wanting to take the leave.

May eligibility be conditioned on whether the individual gave notice to the employer?

Yes. Although the Model State Legislation does not provide for such a condition because it may result in denials due to the technicality of when the individual requested leave, States may impose it. The basis of such a requirement is that employers should be given sufficient time to accommodate the leaving/absence of the individual. If such a provision is included, the DOL recommends that the notice be required to be given no more than 30 days prior to birth or placement, but only where practicable. The FMLA contains a 30-day requirement or shorter notice period where giving 30-day notice is not practicable; it does not require notice when the necessity to take leave is unforeseeable. (Section 102(e), Family and Medical Leave Act, Pub. L. 103-3 (February 5, 1993).)

May eligibility be conditioned on whether the individual chooses not to return to work?

Yes. However, based upon Jenkins v. Bowling, 691 F.2d 1225 (7th Cir. 1982), States may not delay payment until after the individual returns to work. Section 303(a)(1), SSA, requires the full payment of benefits when due, precluding States from delaying payment while awaiting the individual's return to work. A State may, however, declare an overpayment of benefits after the individual fails to return to work.

May an individual be paid BAA-UC under the Federal-State extended benefit program or any of the federally funded unemployment programs?

It depends on the program. Benefits under the UC for Federal Employees (UCFE) and UC for Ex-Servicemembers (UCX) programs are, by Federal law, required to be paid on the same terms and subject to the same conditions as State benefits (with exceptions not relevant here). Therefore, BAA-UC will be paid to individuals under these programs to the same extent as under State law.

Individuals may only receive Disaster Unemployment Assistance (DUA) when their unemployment is caused by a disaster as provided in 20 CFR Part 625. However, if they meet their State's Birth and Adoption UC provisions, then they will satisfy the availability requirement at §625.4(g), and so may qualify for DUA. For example, an individual who is unemployed due to a major disaster may later give birth. If this individual satisfies the BAA-UC requirements in the State's law, she may receive DUA.

Extended Benefit claimants may not receive Birth and Adoption UC since they cannot meet the systematic and sustained work search requirements in 20 CFR 615.8(g).

Individuals claiming trade readjustment allowances (cash benefits) under the Trade Adjustment Assistance and the North American Free Trade Act Transitional Adjustment

Assistance programs will be ineligible since such individuals are required to either be in full-time training or conduct the systematic and sustained work search required for the Extended Benefit program.

Financing costs of BAA-UC

May BAA-UC costs be socialized among employers?

Yes. States are free to socialize or not socialize costs of BAA-UC. The Model State Legislation socializes costs—also called “noncharging.” An employer may be reluctant to bear all the costs of BAA-UC caused by an employee taking leave since the employer will not have caused the individual’s unemployment. Since noncharging is permitted when the unemployment is caused by the employee, it is permitted in this situation. This position applies to both contributory and reimbursable employers.

May BAA-UC costs be paid from a State fund other than the State’s unemployment fund, for example, a State’s temporary disability (TDI) fund?

Yes. Nothing in Federal UC law governs the treatment of moneys in these funds because they are financed by a separate tax and held separately from the State’s unemployment fund. For example, a State with a TDI program may enact a special disability insurance tax on employers and deposit the proceeds in a disability fund. If the State chooses to use one of these funds (or create such a fund) to pay birth and adoption leave benefits, the requirements of DOL’s BAA-UC regulation will not apply.

Administrative Costs

May States use administrative grants received from the Federal government to pay for the administration of a BAA-UC program?

Provided that all the requirements of the BAA-UC regulation are met, the use of administrative grants is permissible, including for purposes of studying and evaluating the BAA-UC program. However, if the regulation's requirements are not met, the expenditures of grant funds are not for the proper and efficient administration of the State's law as required by section 303(a)(8) of the Social Security Act.

Reporting

Will States need to amend their laws to address any Federal reporting requirements concerning BAA-UC?

Although this is a matter for States to determine, the DOL anticipates that few, if any, States will need to amend their laws since most State laws already contain language concerning reporting. Many of these laws are based on the language on page 95 of The Manual of Employment Security Legislation, as revised September 1950, which requires that the agency "make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports."

What are the reporting requirements?

The DOL has not yet finalized a methodology for evaluating State BAA-UC programs.

When that methodology is completed, State reporting requirements will be issued in a separate information collection request and, if subject to the Paperwork Reduction Act, published for public comment in the Federal Register.

06/22/99 12:19 FAX 202 225 9480

WAYS AND MEANS

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COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6348

June 21, 1999

A.L. SINGLETON, CHIEF OF STAFF

JANICE MAY, MINORITY CHIEF COUNSEL

The Honorable William Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

For six decades, American workers have had the security of knowing that if they lost their job, they could receive unemployment benefits to feed their families and pay their bills. The unemployment trust fund has proved to be an invaluable safety net for millions of workers since 1935.

For this reason, we are writing to express our strong opposition to your effort to raid this fund for purposes other than helping jobless families. Your decision allowing states to use unemployment compensation funds to provide paid family leave benefits pits out-of-work Americans against their neighbors who have jobs. This is simply wrong. It also is a direct violation of a longstanding and successful policy enacted during the administration of Franklin D. Roosevelt.

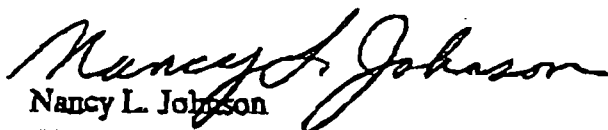
As the Committee on Economic Security said in its 1935 recommendations to Congress, the Unemployment Compensation program is intended to provide "compensation in cash for limited periods when (workers) lose their jobs." The report stated clearly that funds are "payable only for involuntary unemployment."

Your new policy jeopardizes this 64-year-old program by allowing its funds to be drained for other purposes. Instead of circumventing public comment through executive fiat, you should bring legislation before Congress for open and honest discussion.

- 2 -

We hope you will reconsider a policy that clearly endangers the economic security of struggling American families.

Sincerely,



Nancy L. Johnson
Chairman, Subcommittee
on Human Resources



Bill Archer
Chairman

cc: The Honorable J. Dennis Hastert, Speaker of the House
The Honorable Alexis M. Herman, Secretary of Labor

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

May 24, 1999

May 24, 1999

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: New Tools to Help Parents Balance Work and Family

Since I became President, my Administration has worked hard to make sure that parents have the tools they need to meet their obligations at home and at work. I am proud that the very first bill I signed into law was the Family and Medical Leave Act (FMLA). Since 1993, the FMLA has allowed millions of Americans to take up to 12 weeks of unpaid leave -- without fear of losing their jobs -- to care for a newborn or adopted child, to attend to their own serious health needs, or to care for a seriously ill parent, son, daughter, or spouse. Too many American workers, however, have been unable to take the leave they need because they simply cannot afford to go without a paycheck.

Therefore, I am taking new steps toward enabling workers to take the leave they need.

First, I hereby direct the Secretary of Labor to propose regulations that enable States to develop innovative ways of using the Unemployment Insurance (UI) system to support parents on leave following the birth or adoption of a child. In addition, I direct the Secretary to develop model State legislation that States could use in following these regulations. In this effort, the Department of Labor is to evaluate the effectiveness of using the UI system for these or related purposes. In a 1996 study conducted by the Commission on Family and Medical Leave, lost pay was the most significant barrier to parents taking advantage of unpaid leave after the birth or adoption of a child. This new step will help to give States the ability to eliminate a significant barrier that parents face in taking leave.

Second, I direct the Director of the Office of Personnel Management to propose government-wide regulations to allow Federal employees to use up to 12 weeks of accrued sick leave each year to care for a spouse, son, daughter, or parent with a "serious health condition," as that term is defined for the purpose of applying the FMLA. Currently, the amount of sick leave that can be used to care for a family member who is ill

is limited to 13 days each year for most Federal employees. By enabling Federal workers to use the sick leave they have earned, we will eliminate a significant barrier to caring for a family member with a serious health condition. The use of paid sick leave under this policy will be subject to the same conditions as the use of unpaid leave for these purposes under the FMLA. In particular, the same notification and certification requirements that govern the use of unpaid leave to care for a spouse, son, daughter, or parent under the FMLA will apply to Federal employees who use paid sick leave for this purpose. I believe the Federal Government has an important role to play in setting an example for the Nation.

Finally, I direct the Director of the Office of Personnel Management to establish an Interagency Family Friendly Workplace Working Group within 90 days to promote, evaluate, and exchange information on Federal family-friendly workplace initiatives. I also direct the head of each executive department and agency to appoint a family-friendly work/life coordinator to serve as a member of this Working Group. Working Group representatives will be responsible for making sure that Federal employees are aware of the full range of options available to them to meet their personal and family responsibilities (such as alternative work schedules, telecommuting, part-time employment, and job sharing). The coordinators also will provide employees with information about child and elder care resources currently available in their communities, and establish and promote parent support groups, elder care support groups, and on-site nursing mothers' programs.

WILLIAM J. CLINTON

#

NOVEMBER 30, 03:10 EST

Clinton Seeks Expanded Leave Plan

By ANNE GEARAN
Associated Press Writer

WASHINGTON (AP) — President Clinton is proposing that parents receive state subsidies while taking time away from work to care for a new baby.

The payments would come from the same system that now pays temporary benefits to the unemployed, the White House said Monday. Parents then could draw at least a portion of their regular salaries during leaves timed to the birth or adoption of a child, the White House said.



Budget signing
AP/Doug Mills [18K]

Clinton was announcing the proposed new rules today before leaving for a three-day trip to the West Coast and Pennsylvania. Democratic fund-raising events in California and Philadelphia will bracket Clinton's address to the World Trade Organization in Seattle on Wednesday.

The proposed parental leave rules would allow states to experiment with their differing unemployment insurance systems under a voluntary pilot program. Advocates say the program would be inexpensive for states, which already collect payroll taxes and distribute unemployment benefits.



A White House official, who spoke on condition of anonymity, said states may decide for themselves whether they have enough money in the unemployment pot to begin administering parental leave payments, and may also decide the terms and duration of those payments.

BUDGET

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• **Clinton Seeks Expanded Leave Plan**

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Bill signed
AP/Khue Bui [28K]

payments.

At least four states — Massachusetts, Vermont, Maryland and Washington — already are considering extending unemployment benefits to new parents. At the urging of these states, Clinton in May directed the Labor Department to formulate regulations that would allow states to legislate changes under which surplus unemployment funds could be used for parental leave.

The unemployment insurance system, set up in the 1930s, already allows states considerable flexibility in determining eligibility for unemployment benefits. But federal rules bars states from using unemployment insurance funds for other purposes.

The proposed new rule, which would take effect early next year, does not require congressional action.

Parents are already entitled to up to 12 weeks of unpaid leave with the guarantee of job protection. Since the Family and Medical Leave Act was passed in 1993, some 24 million people have used some or all of their entitled 12 weeks to care for a new baby or other family member.



New budget
AP/Khue Bui [18K]

A 1996 federally commissioned study found parents cited the loss of income as the main reason for forgoing the unpaid leave.

The same study found that nearly one in 10 people who took unpaid leave ended up on welfare during their time away from work.

Diplomacy, Human Rights a Y2K Issue

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*after-school
Child care*

**PRESIDENT WILLIAM J. CLINTON
DEPARTURE REMARKS
PARENTAL UNEMPLOYMENT PAY
THE WHITE HOUSE
NOVEMBER 30, 1999**

Good morning. In a few minutes I am heading to Seattle where I will engage in a dialogue with America's trading partners from around the world about how we can best use the enormous potential of the global economy to not only grow our prosperity, but to also improve the everyday lives of citizens and working families. Before I go, I want to tell you how we are using the enormous potential of our strongest economy in years, to help American families balance the sometimes tremendous demands of work and family.

Surging technology and soaring prosperity define America at this moment. But those achievements don't come cheap. They require an enormous commitment of time and effort from America's workers, many of whom are being forced to make an unacceptable choice: between being good workers and being good parents. The truth is, in our 'round-the-world, 'round-the-clock economy there just don't seem to be enough hours in the day for parents to do everything they need to do.

to strong
I am proud that the first bill I signed as President was the Family and Medical Leave Act. Since 1993, millions of Americans have used it to take up to 12 weeks of unpaid leave to care for a newborn or a sick relative without losing their jobs. The importance of this option has been confirmed by the testimony of experts and parents at the first White House Conference on Child Care in 19---, and from groups like the American Academy of Pediatrics. They all tell us that the healthy development of newborn babies absolutely depends on quality bonding and nurturing time with parents or other primary caregivers in the early months of life.

But, the current law just meets a fraction of the need. Too many families can't take advantage of the Family and Medical Leave law because they can't afford to take the time off without a paycheck. In fact, many low-income workers who use the benefit wind up on public assistance to make ends meet. This is simply unacceptable. No other civilized, industrial nation treats parents this way. *← ?*

Last May, in a commencement speech at Grambling State University, I directed the Secretary of Labor to issue a rule to allow states to offer paid leave to new mothers and fathers. Today, I am announcing the Labor Department's proposed regulations that will authorize the use of unemployment insurance by any state that wishes to do so to help new parents. **I believe that the flexible and voluntary use of this option by states will go a long way toward strengthening families and keeping working parents on the job at work and at home.** *Some
Economy*

As I have said, on the eve of the 21st century, we ought to set a goal that all working Americans can take time when they need it to care for their families without

THE WHITE HOUSE
WASHINGTON

OFFICE OF THE FIRST LADY

TO Nicole Rubner
FROM Ann O. Terry
FAX # 977-746-7046
PHONE # _____
OF PAGES (including cover) _____

COMMENTS

Made - Pls. call when you
receive. Terry needs
Comments back ASAP.
Thank
- Ann

losing the income they need to support their families. This new authority by states move us in the right direction and gives us a new tool in our national efforts to strengthen the American family and reward the dignity of work.

Thank you.

→ Kyrie

Steve Gann, Labor 643-4600
800 662 4151

Terry Edmunds, Jan's event 62777
v. short remarks

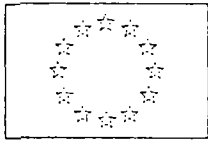
Joanne Howes, Fran Visco 530 2900
aft. 10 am

Sue

~~KF~~

Alex Keenan, OMB

SSBG - child welfare - ideas broadly do
54503



EUROPEAN UNION
DELEGATION OF THE EUROPEAN COMMISSION

REVISED ✓

November 2, 1998

EUROPEAN PARLIAMENT - EUROPEAN COMMISSION

EUROPEAN UNION VISITORS PROGRAMME

The International Leader Programme of the European Union

MEMORANDUM FOR PARTICIPANTS
1999

This memorandum is designed to help you prepare for your visit to the European Union (EU) as a participant in the European Union Visitors Programme (EUVP).

Please note that your EUVP invitation may be subject to reconsideration in the event of a change in the nature of your employment. You are asked to notify the EUVP Coordinator at the Washington Delegation immediately of any change of employment.

1. INTRODUCTION

The EUVP enables young leaders from non-member countries to visit the European Union as guests of the European Parliament and the European Commission. The programme will help you discuss matters of mutual interest with officials of the Union's Institutions, as well as with organizations and individuals in certain Member States. We hope your participation will help you gain through first hand experience a better understanding of the Union and that the experience will be of benefit to you both professionally and personally in future years.

2. VALIDITY, DURATION AND SCOPE OF THE VISIT

Your EUVP study-grant is valid only for the 1999 calendar year and cannot be extended. The duration of your visit will be for 8 working days (plus travel time). We will send you a draft itinerary and work with you on travel and hotel arrangements. Once an itinerary has been agreed, changes are not permitted apart from exceptional circumstances. Travel arrangements must be finalized fourteen weeks prior to your departure.

All visits begin and end in Brussels where meetings will be arranged with staff of the EU Institutions and with the Belgian authorities (a total of 5 days). Your first appointment in Brussels will be a programme discussion with the EUVP Secretariat to finalise details (meetings, tickets, finances, etc.).

-2- Revised Nov 2, 1998

You may spend two days in Strasbourg for meetings with Members and officials of the European Parliament. Depending on your area of interest, meetings may also be arranged in Luxembourg at other EU institutions (Court of Justice, European Investment Bank, Court of Auditors, Statistical Office). **Or** you may visit one other EU member country for a portion of your programme (typically three working days).

3. TIMING

Visits take place during most of 1999, **except during the following dates:**

Easter - March 29 - April 5

Summer break - July 19 - August 23

Christmas (December 20 - 31)

4. STATEMENT OF PURPOSE

To ensure that your programme accurately reflects your professional interests, you should prepare a *Statement of Purpose* which must include:

- ▶ a brief description of your current responsibilities;
- ▶ EU theme(s) you wish to study;
- ▶ specific topics you wish to discuss in your chosen EU member country;

As attachments please include the following:

- ▶ list of names of individuals (or organizations) with whom you wish to meet;
- ▶ up-to-date resume (indicating language(s) in which you are able to conduct meetings without the aid of an interpreter);
- ▶ 3 recent photographs (passport size; black and white or colour)
- ▶ questionnaire for member state to be visited
- ▶ copy of the first page of your passport or similar ID document

Your *Statement of Purpose* should be sent to the Washington Delegation as soon as possible, and not less than 14 weeks before your departure. For your guidance, a sample *Statement* is attached.

5. HOTELS

Unless otherwise requested, single accommodations will be reserved in standard category hotels (normally three star).

Hotels require at least 24 hours notice of cancellation. **Don't be a 'no-show'!** Failure to cancel or late cancellation will entail a legal obligation on your part to pay for a room you have not occupied. In such a case, the EUVP will not accept responsibility for payment. Check-out time is normally 12 noon, unless prior arrangements are made with the hotel. Telephone calls made from hotels are very expensive. Be sure to check the rates before making long distance calls.

6. TRAVEL

You will be given a pre-paid economy class round-trip air ticket from your home to Brussels. You must travel on European airlines. Travel within the European Union will be by plane or train. Train travel is first-class. Train tickets will be issued upon arrival in Brussels.

<i>Baggage</i>	Maximum free baggage allowance on economy class flights within the European Union is 20 Kgs (44 lbs) plus one piece of carry-on luggage.
<i>Travel documents</i>	Check your passport's validity and/or visa(s) prior to departure.
<i>Car rental</i>	The EUVP will authorise car rental for official travel only where no alternative mode of transport is possible. It must be authorised in writing, prior to your departure from the United States, by the EUVP, Brussels. Car rental for personal travel prior to, or following your EUVP will be own your responsibility. If necessary, you should obtain an International Drivers' Licence before leaving the United States.

7. PRIVATE TRAVEL

You are welcome to travel in Europe privately before or after your study-tour. Your exact travel dates (outbound and return) must be clearly indicated in writing before any reservations are made by the EUVP. Any and all supplementary costs are met by you personally.

The EUVP cannot make travel arrangements for accompanying family members. However, the EUVP will make joint hotel reservations upon request, **in writing**. Remember you will have a full programme of meetings, an accompanying family member will spend long periods alone!

8. ARRIVAL IN BRUSSELS

You will not be met on arrival at Brussels Airport. You should make your own way to the hotel (either by taxi or by train and metro). Be sure to use only official taxis. Taxi fare from the airport to the hotel will be approximately **800** Belgian Francs (BF). The approximate cost by train and metro is **140** BF. You are advised to have sufficient Belgian Francs on arrival in Brussels to cover initial expenses.

A letter from the EUVP will be waiting for you at the hotel reception desk.

9. FINANCIAL ARRANGEMENTS

- Per diem* You will receive a *per diem* of 8,000 Belgian Francs (BF) for the duration of your visit, including travel time, maximum 11 days, to cover your hotels and meals. The *per diem* will be suspended if you are obliged to interrupt your programme for personal reasons. \$1.00 is approximately equivalent to 30 BF. The exchange rate fluctuates. Rates are printed daily in major newspapers.
- Special allowance* You will also receive a *one time special allowance* of 10,000 BF to cover incidental expenses such as transfers from airports to downtown areas, local transport costs, taxis, etc.
- Currency* In converting the *per diem* and the *special allowance* into local currencies we suggest that you use travellers cheques, which will be supplied upon request in Brussels. Travellers cheques are not always accepted by hotels, shops, restaurants, etc. They should be cashed as required, preferably at a bank. Banks are normally closed on Saturdays, Sundays and public holidays. However, it is usually possible to cash travellers cheques and exchange currency (at less favourable rates!) in the main hotels, at railway stations, airports, etc. Major credit cards are generally accepted in all EU countries.
- Refund* If for any reason you must shorten your stay, you are required to return the balance of your *per diem* and *special allowance* to the EUVP in Brussels.

10. INSURANCE

The EUVP will provide health and accident coverage during your travel to and from the European Union and while you are participating in the programme. Insurance against loss or theft of your personal effects is not included.

11. CHANGES AND CANCELLATIONS

- Itinerary* Once your travel and hotel arrangements have been set, they are final. Changes are expensive and can be allowed only if absolutely unavoidable.
- Appointments* Please remember that last-minute cancellation of meetings or late arrival causes inconvenience and should be avoided.

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12. FOLLOW-UP REPORT

We sincerely hope that your participation in the European Union Visitors Programme will enable you to establish and strengthen personal and professional contacts and friendships in the European Union. You are encouraged to keep in touch with the people you meet during your stay.

You are requested to send a detailed report on your EUVP visit, within four weeks of your return home, to:

**Willy Hélin, Director
Press and Public Affairs
EC Delegation, 2300 M. Street, NW
Washington DC 20037.**

Please include in the report your comments on the

- ▶ specific *policy areas* of your programme;
- ▶ quantity and level of *appointments* arranged;
- ▶ logistical *arrangements*.

Finally, please remember to keep us informed of any change of address or occupation.

Bon Voyage!

***To prepare for your visit to the European Union
you are invited to make use of the home page of the
Washington Delegation at <http://www.eurunion.org>***



Europa

The European
Commission

Directorate General

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European Union Visitors' Programme - EUVP

- ▶ What is the EUVP ?
- ▶ What is an EUVP grant ?
- ▶ Who is eligible to participate in the EUVP ?
- ▶ How are EUVP participants selected ?

What is the EUVP ?

The European Union Visitors' Programme (EUVP) provides the framework and funds for a 12-days individual study programmes for young leaders from non-EU Member States. They can visit the EU in order to gain a first-hand impression of the Union's policies, Institutions and achievements, peoples and the differing cultures of its 15 Member States.

A further aim of the programme is to increase mutual understanding between professional men and women from without and within the European Union.

The EUVP is jointly sponsored and administered by the European Parliament and the European Commission. Since 1974 over 1500 travel-grants have been awarded.

What is an EUVP grant ?

An EUVP grant is valid for a maximum of 12 days. The grantee visits the EU Institutions in Brussels, Luxembourg and Strasbourg. Instead of visiting Strasbourg, he or she can visit one Member State of his or her choice. Travel and subsistence costs are met by the programme.

Who is eligible to participate in the EUVP ?

EUVP participants can be broadly defined as active or future decision makers and opinion-moulders, whose potential influence and/or leadership prospects within their respective professional spheres are likely to be of long-term importance to the EU and, in particular to the European Parliament and Commission.

More specifically, the categories of EUVP participants include :

- Political milieu, **including members of national and regional parliaments, party officials and advisers to politicians**
- Government, parliamentary officials, in particular those exercising responsibility in areas of particular relevance to the EU
- Media, especially those exercising an editorial function in areas of particular relevance to the EU (e.g. as foreign editor or political correspondent of a national/regional newspaper, radio or TV current affairs producer/presenter, etc.)
- Academics, responsible for teaching or researching in the fields of EU/international affairs

- Trade unionists, exercising a national responsibility in the field of international relations
- Other, private sector lawyers, industrialists, bankers etc. are not normally considered eligible as EUVP participants, except where they exercise responsibility and influence outside the confines of an individual company (e.g. as a member of a national commission or Chamber of Commerce etc.)

Countries from which EUVP candidates are selected include ASEAN Countries, Australia, Baltic States, Canada, Central and Eastern European countries, China, CIS, Cyprus, EFTA countries, Gulf States, Indian sub-Continent, Iran, Israel, Japan, Central and South America countries, Malta, Maghreb and Mashreq countries, Mexico, New Zealand, Occupied Territories, South Korea, Turkey, the United States and former Yugoslavia.

How are EUVP participants selected ?

A Committee under the co-chairmanship of a Vice-President of the European Parliament and a Member of the European Commission selects the EUVP participants from a short-list, drawn up by officials of the EC Delegations in the non-member countries concerned.

Currently, approximately 160 visitors are selected annually for individually tailored EUVP study-grants.

Further details about the European Union Visitors Programme can be obtained from the EUVP Secretariat.

European Union Visitors Programme
Mr. Peter BARKER - JONES, Head of EUVP
Rue de la Loi 200
B-1049 Brussels
Tel: 29.55472 or 29.54448
Fax: 29.64300



▲
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FAX TRANSMITTAL SHEET
CROSS-CUTTING ISSUES LAW OFFICE
OFFICE OF GENERAL COUNSEL
ENVIRONMENTAL PROTECTION AGENCY

TO: Mac Reed and Carla Stone
Ofc #: 395-3563/9177
Fax #: 395-7294

FROM: Craig Annear
Ofc #: 202-564-5538
Fax #: 202-564-5541

Pages: 2 (including this cover sheet)

Date: 11/23/99



Mac and Carla -

EPA's comments on the proposed EO entitled "Further Amendment to Executive Order 1478, Equal Employment Opportunity in Federal Government" are attached. Please call if you have questions.
Thanks.

Craig Annear



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

November 23, 1999

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: EPA Comments on the Proposed Executive Order Entitled "Further Amendment to Executive Order 11478, Equal Employment Opportunity in Federal Government"

FROM: James C. Nelson *Craig Annear, for*
Associate General Counsel
Cross-Cutting Issues Law Office (2322A)

TO: Robert G. Damus
General Counsel
Office of Management and Budget

On behalf of the Environmental Protection Agency, I am providing a response to your November 18 request for comments on the proposed executive order entitled "Further Amendment to Executive Order 11478, Equal Employment Opportunity in Federal Government."

We have the following comments and observations. First, the directive to OPM in new Sec. 7 to develop and implement guidance to effectuate the provisions of the draft order prohibiting discrimination on the basis of an individual's sexual orientation appears redundant. We understand that such guidance has already been disseminated. Second, the quoted portion of Sec. 5 of the draft order should refer to "Sec. 11," not "Sec. 7." Finally, it would be preferable to use more uniform language for the text of the new Sec. 11 and the judicial review provisions of other recent and new Executive Orders.

Thank you for considering our comments. If you have any questions or would like to discuss this memorandum, please call me Craig Annear at 564-5538.

cc: Mac Reed

