June 27, 2000

DEPARTMENT OF LABOR REGULATIONS ON BIRTH AND ADOPTION/UNEMPLOYMENT COMPENSATION BENEFITS

<u>Background:</u>

- The Department issued the final regulation on June 13, 2000, which would allow states, at their option, to provide unemployment compensation benefits to new parents. The regulations will be effective on August 14, 2000.

- States would have to enact legislation to provide these benefits; a number of states have introduced and considered legislation, but no states have yet passed a law.

- States would have the flexibility to set both the benefit amount and number of weeks that new parents could collect such benefits.

- Yesterday, the Chamber of Commerce, the LPA, the Society of Human Resource Management, and two small businesses (located in Maryland and Massachusetts) filed suit in federal district court in the District of Columbia, challenging the regulations.

IF ASKED, because litigation is now pending, comments should be limited to:

1. We have just received the lawsuit and it is currently being reviewed by the Departments of Justice and Labor.

2. We are confident that we have the legal authority to promulgate this regulation, but that no further comments will be made due to the lawsuit.

Paid Leave Radio Address
Questions and Answers on Baby-UI Proposal
June 10, 2000

1. **What does the final regulation do that allows states to use unemployment compensation to pay for leave after the birth or adoption of a child?**

   The Department of Labor has issued this final rule to allow states the option to implement an experiment using their unemployment compensation system as a means for providing paid leave via the partial wage replacement afforded by unemployment compensation to employees who desire to take approved leave or otherwise leave their employment following the birth or placement for adoption of a child. The Administration developed this rule because of dramatic changes in the workforce and interest among state legislatures, worker advocates, and members of the Congress in finding ways to help working families cope with work and family demands.

2. **Does the Administration have the authority to make this change through regulations rather than by seeking legislation as some members of Congress have suggested?**

   The Department of Labor has the authority and responsibility to interpret Federal Unemployment Compensation statutes such as the requirement that individuals must be "able to work and available for work" to be eligible for UC. Although no explicit able and available requirements are stated in Federal UC law, the Department and its predecessors have interpreted Federal UC law as requiring participating states to have these requirements.

   The Department believes that an expansion of an earlier interpretation of existing Federal law provisions <u>does</u> <u>not</u> require legislative approval. The Department has previously interpreted the able and available requirements to permit the payment of UC in some specific areas: jury duty, temporary layoffs, illness, and training. While none of these previous interpretations exactly parallels the payment of Birth and Adoption UC, they are based on the same premise that situations exist in which it is important to allow a flexible demonstration of availability.

3. **Will states be required to develop Birth and Adoption UC experiments?**

   No. State participation is wholly voluntary and states will have wide latitude in developing such a proposal. A State choosing to implement Birth and Adoption UC will need to amend its UC law.

4. **Some critics of the experiment cite the Department's own concerns about state**

unemployment fund solvency as a reason not to allow states the flexibility to offer these benefits. Will these regulations undermine fund solvency?

No. The Administration 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 its unemployment fund whenever coverage, benefit expansions, or tax changes are considered within its UC program. States in weak solvency positions should not conduct a Birth and Adoption UC experiment without creating a means of financing it. The Department of Labor will provide technical support to states needing assistance in determining their solvency positions.

5. **The Administration's cost estimates have been called "scandalously" low as compared to the estimates offered by some others, which ranged as high as $36 billion. How do you explain the differences between the estimates?**

Foremost, the Department of Labor estimates that in this current year, the cost for all unemployment compensation benefits will total $22 billion. The $ 36 billion is a gross overestimate of the total cost. Critics make a number of assumptions, which we believe are inaccurate, including:

- All states will enact paid leave for new parents through the Unemployment Compensation system. This is highly unlikely given the number of states in the past that have expanded their unemployment benefits and we expect that only a few states will.
- All employed workers will be eligible. This is not the case - some do not have sufficient earnings.
- All potential eligibles will take leave. This is doubtful, especially for both parents.
- All leave-takers will apply for Birth and Adoption UC. This is not the case for the current program, where at most 70 to 80 percent of eligibles apply.
- Each claimant will collect the full 12 weeks. This ignores that UC does not provide full wage replacement so that many people will still need to get back to work sooner than 12 weeks.
- There will be no deductible income such as employer supplied disability insurance or paid annual or sick leave. In fact, due to employer-provided benefits, there will be substantial reductions, which will lower costs to the States' UC programs.

6. **What is the cost estimate for the final rule?**

The estimated costs changed between the proposed rule, issued December 3, 1999, and the final rule. After the proposed regulation was published, legislation was introduced in significantly more states than had previously shown interest in Birth and Adoption UC. Consequently, based on past enactment of UC expansions, we adjusted the upper range of our cost estimate to $196 million to reflect the increased likelihood of state experimentation with Birth and Adoption UC. Although actual costs will vary, a typical state's expenditures will increase only by 6% to 9% of current benefits. These trust funds are designed to be self-adjusting over time in response to the changing demands for unemployment compensation.

Because of this change in the cost estimates, the Birth and Adoption UC rule is considered a "major" rule. Accordingly, a Regulatory Impact Analysis has been developed and is available as part of the public record.

7. **Which states are considering making this change to their UC system?**

Fifteen states have proposals to offer paid leave to parents through the UC system. The fifteen states are: Connecticut, Florida, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Vermont and Washington. Some of these states, along with several additional states, are also developing coordinated proposals to provide paid family leave using resources beyond UC. The Massachusetts state legislature is considering a UC proposal in its current legislative session, which ends July 31st.

7. **In 1997 the Department of Labor, in response to a bill introduced in the Vermont legislature, stated that the UC program could not be used to provide partial wage replacement under the Vermont family and parental leave program. Why has the Department changed its policy in this area?**

The Department has, indeed, revisited its position. Since the time of the Vermont inquiry, additional state legislatures expressed interest in using the UC program for this purpose. We subsequently determined that there was sufficient flexibility in Federal UC law to accommodate an experiment in this area, and focused that experiment on birth and adoption leave.

8. **When will the rule be effective?**

The proposed regulation will be effective 60 days from the date of its publication in the Federal Register.