

STATE IMPLEMENTATION OF PRESIDENT OBAMA'S INITIATIVE REMOVING HURDLES TO EDUCATION FOR JOBLESS WORKERS COLLECTING UNEMPLOYMENT BENEFITS

"The idea is to fundamentally change our approach to unemployment in this country, so that it's no longer just a time to look for a new job, but is also a time to prepare yourself for a better job. That's what our unemployment system should be – not just a safety net, but a stepping stone to a new future. It should offer folks educational opportunities they wouldn't otherwise have, giving them the measurable and differentiated skills they need ...not just to get through hard times, but to get ahead when the economy comes back."

President Barack Obama, May 8, 2009

With these words, President Obama launched a major initiative charting a new direction for the nation's unemployment system, emphasizing the critical role the program can play in helping unemployed workers gain access to new careers through investments in education and training.

The President's initiative, coordinated by the Departments of Labor and Education, starts by making the case to the states that they should expand the rules that now prevent many workers from collecting unemployment benefits while participating in community college and other degree-granting programs. In addition, the colleges are urged to use their discretion to award Pell Grants to unemployed workers who would otherwise not qualify if their pre-job loss earnings were considered in determining eligibility.

What follows is a more detailed treatment of this initiative, focusing on the best options available to the states to implement the unemployment insurance reforms expanding access to education and training while also coordinating more effectively with the nation's workforce development and higher education systems. With the fall 2009 semester fast approaching, these reforms require immediate action by the states to ensure that jobless workers seeking to participate in community college can do so in a timely fashion.

The Special Moment to Expand Access to Education & Training

1. New Recovery Benefits Respond to Today's Struggling Job Market

Job loss in today's recession is a devastating event for workers up and down the income and education ladder. However, with the help of education and training, unemployment also offers workers an opportunity for meaningful change, often paving the way to more stable future employment and better-paying jobs. Thus, a period during which jobless workers receive unemployment insurance can provide a rare

opportunity – combining essential income support with *time* for workers to invest in their skills and education.

Now is an especially opportune moment for unemployed workers to consider the option of improving their education and training and for states to facilitate the ability of jobless workers to do so. Job loss over the past year has been substantial and is expected to continue to grow in the months ahead. And unemployment, already at almost 9 percent, is expected to top 10 percent and remain high into 2010. Given the large numbers of jobless workers and the massive shortage of jobs – with nearly five unemployed workers for every available job opening – workers are remaining unemployed for much longer periods of time. More than one in four workers is now unemployed for more than six months, the highest rate since the records were first kept in 1948.

Thus, in today's struggling economy, the unfortunate reality is that many workers are going to be unable to find jobs no matter how hard they look for work. For these workers, the choice is often to remain idle and on the sidelines while looking for work, or to invest their time out of work to upgrade their skills so they are better positioned to attain a quality job when the economy picks up.

Thanks to the federal recovery legislation, new federal resources are flowing into the education and training systems that will make educational opportunities more affordable for these jobless workers. The legislation has invested nearly four billion more federal dollars in basic training through the Workforce Investment Act and increased individual Pell grants by at least \$500, opening up additional opportunities for higher education that are estimated to benefit as many as seven million Americans. Meanwhile, enhanced unemployment benefits provided by the federal government can help unemployed workers pay their bills while also accessing education and training. Indeed, workers in most states now qualify for 46 weeks of federal extended benefits (and up to 53 weeks in 13 high unemployment states), in addition to their standard 26 weeks of state unemployment assistance.

2. How Unemployment Benefits Support Education & Training

To receive unemployment benefits, workers have to be available to take a job and be actively searching for work. However, to help workers seeking training and education who normally would not qualify for benefits, federal law also requires states to waive the job-search requirements if workers are first approved for training by the state's unemployment insurance agency.

This critical protection, adopted nearly 40 years ago, means that states are not free to deny UI to workers who express an interest in training. When this paper speaks of approved training it refers to the ability of workers to continue receiving unemployment benefits to meet their basic needs while they participate in training. The task of accessing federal or state funds to pay for the tuition of the training and education program is the responsibility of a different set of government agencies and educational institutions, not the unemployment insurance program.

States will have to make significant changes in their policies to increase the participation of unemployment insurance claimants in training and education. Many states interpret the "state approved training" provision extremely narrowly, restricting access to education and training for many deserving workers. For example, states often refuse to authorize workers to collect unemployment benefits while participating in community college or other degree-granting programs, despite the fact that workers with an associate's degree are far less likely to be unemployed than those with only a high school diploma. Numerous other obstacles in

state laws pose serious challenges for workers who wish to pursue education and training while collecting unemployment benefits.

In addition to facing unnecessarily tight restrictions on permissible training, workers seeking to combine training with receipt of jobless benefits are often trapped in a maze. These workers can find federal subsidies to pay the cost of training through the Workforce Investment Act or other funding streams. However, too often they are effectively denied the ability to participate in the training because of states' restrictions on unemployment insurance eligibility. States are in an ideal position now to better coordinate these critical services, all the way down to the one-stop centers, and harmonize education and training programs with the unemployment insurance system.

3. Training & Education is a Smart Investment

State investments in reforming their unemployment policies to facilitate access to education and training pay multiple dividends, helping workers permanently improve their income prospects and reducing future unemployment insurance claims. These reforms also further the important public policy goal of creating a better integrated income support and workforce development system. In addition, they support a key principle of the unemployment insurance program, that benefits are intended to help give workers the space and opportunity they need to secure better jobs. And, of course, these policies improve the capacity of workers to meet changing demands of jobs in an ever-evolving economy, helping to ensure a better match between what employers need and what workers can offer.

Many states have already made great progress in expanding access to education and training by creating new training programs funded alongside their state unemployment insurance systems.¹ With the help of the unemployment insurance modernization funding provided by the federal recovery legislation, many states are also expanding their laws to provide extra unemployment benefits when needed for workers to participate in training.

Given the unique opportunities now presented by the new federal investment in unemployment benefits and education and training, the extreme job shortage and rising unemployment, now is the moment for states to take a fresh look at their policies authorizing access to unemployment benefits while workers participate in education and training.

The Basics of the Unemployment Insurance System's Training and Education Policy

1. The Federal Work-Search Exemption For Workers in Education and Training

In 1970, Congress followed the lead of half the states and amended the federal unemployment insurance law to impose some limits on states' authority to deny unemployment benefits outright to all workers participating in education and training. Specifically, the federal law states "compensation shall not be denied to an individual for any week because he is in training *with the approval of the State agency* (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work)" [emphasis added].² The intent of Congress in

¹ National Employment Law Project, *Expanding State Education and Training By Partnering with the Unemployment Insurance Program* (September 2008).

² 26 U.S.C. 3304(a)(8).

passing the legislation was “to remove the impediments to training which remain in our unemployment insurance system.”³

2. The State Policies Implementing the Federal “Approved Training” Exemption

In response to the federal law, states developed criteria to approve education and training programs for individual workers, making clear that once certified for training, workers would not be denied unemployment benefits for failing to search for work or accept “suitable” work offered by the state or an employer. The details of state policies implementing the law are often set out in regulations, manuals or directives, not in statutes. Opting for an administrative approach rather than legislation gives states the flexibility needed to adapt eligibility rules to accommodate the realities of changing labor markets and economic conditions.

Although data comparing the states’ approach to “approved training” are limited, the available evidence suggests that some states are far more likely than others to approve a broad range of training and education activities while workers collect unemployment benefits. At the high end, some states’ policies have the effect of allowing 4.5 percent of all unemployment insurance claimants to participate in education and training while collecting their benefits, but others authorize fewer than 1 percent to do so. Those states with the highest approval rates include (in order of ranking) Maine, West Virginia, New Jersey, North Carolina, Georgia, Iowa, New Mexico, Wyoming, Tennessee and Washington. Several of these states (Maine, New Jersey and Washington) have laws and policies that clearly authorize a broad range of education and training activities, including community college. In the other states, it’s more difficult to evaluate the scope of approved education and training activities.

The Key Features of the President’s Initiative and the New Federal Guidance

1. Review State Approved Training Policies

On the same day the President delivered his address national address,⁴ the U.S. Department of Labor (DOL) issued guidance to the states calling on the states to revisit their unemployment insurance policies to expand access to education and training during the recession.⁵ DOL stressed:

In this time of recession, states are strongly encouraged to reconsider their laws and regulations, and any application administrative requirements, to determine if their approved training requirements are appropriate to the current economy. Post-secondary education and training are increasingly important for success in the job market. Periods of unemployment, particularly in the current economic climate, provide opportunities for laid off workers to develop new skills, so that employers will benefit from a skilled workforce when the economy recovers.

As described in more detail below, DOL’s guidance calls on the states to act in number of specific areas of special importance. DOL will issue additional guidance in the near future, providing “best practices” as models for the states to consider.

³ H.R. Rep. No 612, 91st Congress, 1st Session 17.

⁴ Remarks by the President on Job Creation and Job Training (May 8, 2009) (available on-line at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-Job-Creation-and-Job-Training-5/8/09/).

⁵ U.S. Department of Labor, Training and Employment Guidance Letter No. 21-08 (May 8, 2009) (available on-line at <http://wdr.doleta.gov/directives/attach/TEGL/TEGL21-08.pdf>)

2. Special Notices to Unemployed Workers

Of special significance, the DOL guidance instructed the states to issue letters to all workers collecting unemployment benefits as of May 10th, describing the Pell Grant program, directing recipients to information about Pell Grants, and explaining that unemployment insurance beneficiaries can continue to receive unemployment benefits while in training. The model letter attached to the guidance also encourages workers to provide the letter from the state unemployment insurance agency to the school they have selected, as proof that the worker is eligible for special consideration when their income is evaluated as part of the Pell Grant application process.

The new notice requirement is especially important to the success of the President's initiative. Indeed, if states act quickly, unemployed workers will have the opportunity to register for courses in time for the fall semester and secure the needed approval for training by the state's unemployment insurance agency. Some states may have legitimate concerns over a likely increase in requests to approve training for workers receiving unemployment benefits caused by the new notices. However, given the unprecedented nature of the economic downturn and the approaching fall semester registration deadlines, it is vital for the states to act without delay and for advocates to closely monitor the implementation of the initiative.

3. Expanded Pell Grant Approval

The Department of Education (DOE) also issued updated guidance to the nation's financial aid administrators, broadening the agency's interpretation of the "professional judgment" rule that gives local institutions discretion to waive the income guidelines for Pell Grants when workers have recently lost their jobs.⁶ Specifically, the guidance advises colleges that workers collecting unemployment benefits will be receiving notices informing them of their rights to apply for Pell Grant funding to support their education, and that the institutions can use these notices to justify their decisions to authorize Pell Grants for unemployed workers. Pell Grant scholarships provide up to \$5,350 in education and training expenses for qualified applicants.

In the past, colleges have been reluctant to apply their discretion in this area because DOE had used the percentage of students for whom a "professional judgment" determination was made to select institutions for program review. However, for at least the next two years, DOE will no longer give special priority to these cases for review. As the guidance states, "As long as you retain in your student records a valid letter, as described above, or other evidence of current receipt of unemployment insurance benefits from a state unemployment office, we will consider that to be adequate documentation for the adjustments to the student-recipient's income."

4. New Opportunity.Gov Website

As part of the initiative, the DOL and DOE have also created a new website (www.opportunity.gov) that brings together information and advice for unemployed workers to better access education and training with the help of their unemployment benefits and the expanded authority on the part of financial aid administrators to authorize Pell Grants.

Key State Reforms to Implement the President's New Education Initiative

⁶ U.S. Department of Education, GEN-09-05: Update on Professional Judgment by Financial Aid Administrators" (May 8, 2009) (available on-line at <http://www.nasfaa.org/publications/2009/eaprofjudg051109.html>).

With record rates of long-term unemployment and extended periods of unemployment benefits now available to large numbers of workers, there has never been a better time for the states to revisit their unemployment insurance policies to help maximize access to education and training. Indeed, many states have not updated their “approved training” policies since their initial adoption in the 1970s, even though the economy and labor market have fundamentally changed, with education playing an increasingly important role in defining workers’ long-term career opportunities. Thus, the following discussion focuses on the key areas of state reform to implement the President’s initiative while featuring model state policies.

1. Emphasizing Post-Secondary Education

In today’s economy, workers are flocking to post-secondary education programs, especially less expensive community college degree-granting programs, to expand their skills in their chosen fields or to acquire skills for new occupations more likely to be in demand when the economy recovers. This investment in education is well worth it. Workers with a community college degree are roughly one-half as likely to be unemployed as those with only a high school education (6.9 percent unemployment in March 2009 for those with a community college degree compared to 11.4 percent for those with just a high school diploma).⁷

Indeed, the evidence is clear that investments in more long-term training produce far more meaningful employment and earnings gains compared to more short-term training. That’s the conclusion of Professor Paul Osterman of the MIT Sloan School, who argues in his study of dislocated workers that “short-term training leads to small or non-existent gains” while “more substantial long-term training does seem to improve the earnings of dislocated workers to an important degree.”⁸

Commenting on community colleges specifically, Professor Osterman states that “the bottom line . . . is that when students attend for a year or more, regardless of whether they receive a degree, there is substantial benefits. That is true, and perhaps more so, for occupational programs as for academic ones.”⁹ According to Professor Osterman’s analysis of dislocated workers, the challenge is to ensure that far more workers are able to stay in school long enough to reap the benefits of a community college education. With Pell Grants more readily available to fund workers to enroll in community college and extra unemployment benefits to support them during their studies, the opportunities for jobless workers to stay in school as long as needed increase significantly.

Despite the critical importance of community college and higher education in today’s competitive labor market, state unemployment programs routinely fail to authorize workers to collect unemployment benefits while participating in more long-term, degree-granting programs. Indeed, many states still limit eligibility for jobless benefits while in education and training to only those unemployed workers participating in vocational and other more short-term training.

For example, Wisconsin’s unemployment insurance program requires workers to be enrolled in “vocational training or basic education which is a prerequisite to such training.”¹⁰ And North Dakota’s regulations only approve training and education that is “vocational in nature or short-term academic training vocationally

⁷ “Community College Pays Off for Job Seekers,” *The Wall Street Journal*, May 5, 2009 (available on-line at <http://blogs.swj.com/economics/2009/05/05/community-college-pays-off-for-job-seekers/>)

⁸ Paul Osterman, “Employment and Training Policies: New Directions for Less Skilled Adults (October 2005), at page 14.

⁹ *Id.* at page 17.

¹⁰ Wisconsin Statutes, § 108.04(16)(a).

directed to an occupation or skill for which there are or are expected to be reasonable work opportunities available to the individual.”¹¹

The President’s initiative seeks to turn this situation around by emphasizing the value of more long-term education and training for unemployed workers. As the President explained, “if we want to help people not only get back on their feet today, but prosper tomorrow, we need to take a rigorous approach to higher education and technical training. That starts by changing senseless rules that discourage displaced workers from getting the education and training they need to find and fill the jobs of the future.” DOL’s implementing guidance urges states to approve “programs at community colleges with job skills components, courses leading to general equivalency degrees, courses in adult basic education, language courses, or other courses of study, including degree and certificate programs, that are likely to increase the individual’s long-term employability.”

Model State Policy: Maine has adopted the position that community college and other degree-granting programs should be approved when appropriate for the times and for the individual, not automatically dismissed for unemployed workers who seek higher education with the help of their unemployment benefits. Thus, by statute, Maine provides that “[e]nrollment in a degree-granting program may not be the sole cause for denial of approved training status for an otherwise eligible claimant.”¹² Maine’s policy is a reasonable model for other states to follow, especially now when most, if not all of the income support jobless workers would need while participating in more long-term education can be provided through federally-financed benefits.

2. Coordinating with the One-Stop Career Centers and WIA System

With the shift to One-Stop Career Centers authorized by the Workforce Investment Act (WIA), implementing a less restrictive approved-training policy is also a way for states to reexamine the relationship between their one-stop career centers and the unemployment insurance program and better integrate the two.

In today’s economy, maximum coordination is required between the services provided unemployed workers by the one-stops and the decisions of the state’s unemployment system authorizing workers to collect unemployment benefits while participating in training and education. Thus, DOL’s guidance goes to great lengths to emphasize the critical role of the one-stops to help ensure that workers receive both unemployment benefits and subsidized education and training.

The DOL anticipates that once unemployed workers collecting benefits receive notice of their rights to unemployment benefits while in training and the possibility of Pell Grants, many will turn to the One-Stop Career Centers for additional assistance. The DOL guidance identifies the following specific activities One-Stop Career Center should undertake to achieve the goals of the President’s initiative:

- Secure Approval of Training Authorized by Unemployment Insurance: “As part of working with UI beneficiaries to find appropriate training, One-Stop Center Staff should coordinate with UI staff to secure approval of that training, so the individual does not later face difficulty maintaining eligibility due to training that does not qualify.”

¹¹ N.D. Admin.Code § 27-03-08-04.

¹² ME.REV.STAT.ANN. tit.26, §1192(6).

- Assist in Applying for Pell Grants: “States should ensure that all One-Stop Career Centers are prepared to assist UI beneficiaries in applying for Pell Grants and other financial aid. Some One-Stop Career Centers already routinely assist individuals with financial aid applications. Others may need to establish policies, provide desk aids, or upgrade Web sites and materials in the One-Stop Career Centers.”
- Access Full Range of Services When Seeking Pell Grants: “One-Stop Career Centers should help UI beneficiaries seeking Pell Grants have access to the full range of services available within the One-Stop Center,” including skills assessments, career guidance, labor market information and other services.

Model State Policies: To ensure better coordination between the unemployment insurance and workforce development systems, the states should begin by automatically authorizing all workers to continue collecting unemployment benefits when they have been approved for WIA-funded training.¹³

Significantly, New York State recently adopted a policy authorizing the One-Stop Career Centers to apply directly to the state unemployment insurance agency for a worker to receive benefits while in training. With the help of a special form, which the One-Stops fax to a unit of the state’s unemployment insurance agency, all the criteria for approval of unemployment benefits are listed and evaluated by the One-Stop staff. Thus, rather than requiring individuals to apply separately after they have been found eligible for WIA training, the One-Stop Career Center’s recommendation is provided directly to the unemployment insurance agency and subsequently approved, except in special cases.

3. Increasing the Skills of Entry-Level Low-Wage Workers

Too often, state policies regulating the approval of education and training are implicitly biased against opportunities for entry-level, low-wage workers to advance.

For example, as a prerequisite for approving unemployment benefits during periods of training, many states require individuals to show that employment opportunities in their field are “substantially impaired.” Given the expansion of low-wage service sector jobs, meeting this test may not be feasible for many low-wage workers. Other states require individuals to show that their work is not in a field that is a “demand occupation,” again ignoring the realities facing low-wage workers -- because of economic and industrial shifts, work in their fields may still be in demand.

The perverse result of these restrictions is to lock low-wage workers into dead-end jobs, a result at odds with the goals of our workforce development programs and with an underlying purpose of unemployment benefits, i.e., to give workers the space they need to find better jobs. For example, the DOL guidance gave the example of “an individual laid-off from a fast-food restaurant [who] will be denied training since fast-food jobs continue to exist.” DOL’s position is that “[s]uch approaches limit an individual’s ability to obtain skills that might lead to more secure employment and higher wages.”

¹³ Maine and other states have adopted this approach. However, some states (such as Connecticut and Georgia) have failed to update their laws and regulations in many years, and thus they continue to reference the predecessor to the WIA program, the Job Training Partnership Act, as qualifying for automatic approval. Other states (such as Nebraska) have regulations stating that their agency “may” approve WIA-funded training for workers seeking to qualify for unemployment benefits. Most often, it appears that the states do not expressly provide that federally-funded training of any sort will automatically qualify as approved training for workers to collect unemployment benefits.

Model State Policy: New York recently enacted a major innovation that helps level the playing field for low-wage workers seeking to participate in training while receiving the essential income support provided by unemployment benefits. Specifically, the state now recognizes that an upgrade in skills that leads to advancement in the same or a related field is properly within the scope of the state's approved training policy.

Under the new policy, the "definition of 'training leading to more regular long-term employment' has been expanded to include any training that will provide a higher paying job for claimants who are in entry level or low wage/high turnover occupations. The fact that employment opportunities in their current occupation are not substantially impaired or that their occupations could be categorized as 'demand occupations' will not serve as a barrier to approval."¹⁴

4. Removing Artificial Barriers to Approved Training

Finally, many state laws and policies also include time limits on the duration of training and education and other artificial barriers to approval that should be reformed to reflect the new realities of long-term unemployment.

For example, regulations in Massachusetts preclude approval of any training or education activities that last longer than one year. Inflexible state rules such as these ignore the current needs of many workers to take part in more long-term training and the availability of federally-funded extended benefits for durations of more than one year to help support workers in training.

Similarly, some states require workers to enroll in training or education soon after they start collecting unemployment benefits. This requirement ignores the reality that many jobless workers are unaware at the outset of unemployment that they may remain unemployed for a prolonged period of time. State policies should be more flexible in recognizing the challenges of today's unemployed workers, many of whom will only be able to determine after they have received benefits for some time that participating in training and education is their best option for finding and maintaining new employment.

The Impact of the President's Initiative on the Unemployment Insurance Modernization Agenda

As part of the federal recovery legislation, \$7 billion in federal incentive funds were made available to the states to modernize their unemployment insurance programs by expanding benefits to those workers who have been left out of the system. The list of state reforms that qualify for federal incentive funding includes programs that provide 26 weeks of extra unemployment benefits for workers who participate in training.

The states that provide these extra weeks of unemployment insurance, which are added at the end of a worker's federal extended benefits, are in a much better position to support the long-term education and training needs of their citizens.¹⁵ Indeed, as a result of the federal extensions, several states are now in a

¹⁴ Letter from the New York State Department of Labor (Nancy Dunphy, Deputy Commissioner for Employment Security and Bruce Herman, Deputy Commissioner for Workforce Development to Julia Rosner and Andrew Stettner, dated June 16, 2008).

¹⁵ Since the federal recovery legislation was enacted on February 17th, six new states have passed laws (Colorado, which is awaiting the Governor's signature, Georgia, Idaho, Iowa, Kansas and Wisconsin) providing extra weeks of unemployment benefits for workers participating in training and education. In addition, six states (California, Maine, Massachusetts, New Jersey, Oregon and Washington) already had such laws on the books (although several of the state laws require modifications to comply with the incentive funding provisions of the recovery legislation).

position to provide enough unemployment benefits to last until the worker is able to complete a two-year associate's degree at a community college.

Even when the economy recovers and federal extended benefits are no longer available, workers in states that have adopted the UI in training reform will still qualify for 52 weeks of unemployment benefits (26 weeks of regular state benefits, plus 26 weeks under the state extension program for workers in training). Benefits of this duration are sufficient to enable jobless workers to take part in significant technical training in a community college setting or with other quality training providers.

Thus, the President's new initiative, requiring a review of state unemployment insurance policies, strongly complements the broader reform agenda to create state policies that promote long-term training and education for more workers who are in position to qualify for benefits.

Conclusion

The President's promising new initiative provides the opportunity to reform the unemployment insurance system in the short-term, taking maximum advantage of the new funding for education and training and additional jobless benefits provided in response to the current economic downturn. In addition, it opens the door to shaping even more fundamental long-term reforms, aligning the unemployment system with the workforce development and higher education systems to convert periods of joblessness into meaningful opportunities for education and training, helping to build a more skilled and competitive workforce.

For policy makers and advocates in the states, the challenge is to first understand current state policy, including the scope of the rules authorizing access to unemployment benefits while in education and training and the numbers approved and rejected under the current rules. Next, with the help of model state policies described in this paper and other resources, policy makers and advocates are in a position to promote model reforms that expand access to training and education that better reflects the needs of today's workers. Finally, the hard work needs to be done on the ground to ensure that workers are properly served by all the agencies involved, including the unemployment insurance system, the One-Stops Career Centers and the post-secondary education institutions.