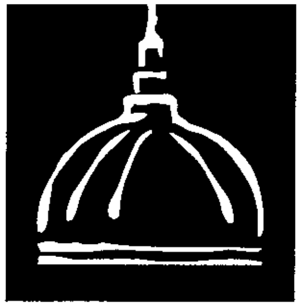

Legislative Update

NASWA Winter Policy Forum 2012

NATIONAL ASSOCIATION OF
STATE WORKFORCE
AGENCIES

NATIONAL ASSOCIATION OF STATE WORKFORCE AGENCIES

LEGISLATIVE ISSUE UPDATE

February 2012

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BUDGET/APPROPRIATIONS: FISCAL YEAR 2013 PROPOSED BUDGET

BACKGROUND

On February 13, President Obama submitted his Fiscal year 2013 Budget to Congress. It would provide $12 billion in discretionary funding for the U.S. Department of Labor (USDOL), a $600 million decrease from FY 2012. USDOL's fiscal 2013 budget also would include $88.6 billion in mandatory budget authority to fund mandatory payments, including unemployment insurance benefits and trade adjustment assistance. Specific funding requests are detailed in the chart below.

STATUS

Some of the significant changes in the fiscal 2013 proposed budget include the following:

1. <u>One-Stop/LMI</u>

One-Stop/LMI was increased by $52.1 million to $115,720 million. The increase will support the following five major investments:

- **Improve access to services ($50 million).** The Department <u>will rebrand</u> and strengthen one-stop career centers to increase public awareness and use of the career center system, expand access to workforce services, offer more convenient hours, and create better on-line tools that offer convenient, personalized virtual services with greater interactivity and real-time communication.
- **Workforce Information Grants to States** for core products and deliverables ($32 million) supporting production of local workforce information for use by One-Stop career centers in advising customers on skills employers are seeking and where to get the training;
- **Disability Employment Initiative** within ETA ($12 million) to provide expanded specific support to assist individuals with a disability seeking employment;
- **System support and accountability** ($20 million);
- Implementation of certain provisions of the **VOW to Hire Heroes Act** ($2 million).

2. <u>Unemployment Insurance</u>

UI State Operations decreased by $191.2 million due to a projected reduction in the Average Weekly Insured Unemployment (AWIU) from 4.832 million per week to 3.908 million per week. Each increase of 100,000 AWIU would be funded at 28.6 million.

3. <u>Pilots, Demonstrations, Research and Evaluation</u>

Pilots, Demonstrations, and Research ($6.616 million), along with Evaluation ($9.581 million) funding was eliminated and the Secretary is requesting the use of a set-aside funding mechanism to finance evaluations and applied research for employment and training programs. Specifically, the Department is requesting that up to 0.5 percent of the amounts appropriated for departmental programs be made available to support this effort. These programs include: Office of Job Corps; UI and ES Operations; Employee Benefit Security Administration; Workers Compensation Program; Wage and Hour Division; Office of Federal Contract Compliance; Office of Labor Management Standards; Occupational Safety and Health Administration; Mine Safety and Health Administration and Veterans Employment and Training Administration.

4. State Set Aside

The budget again proposes to retain the state set-aside at five percent, and to increase funding for the Workforce Innovation Fund to $100 million. (Note: Congress reduced this fund to $50 million in FY 2012.)

5. Worker Misclassification

The budget proposes $10 million in grants to help states build their capacity to detect and address worker misclassification within the unemployment insurance system.

6. Senior Community Service Employment Program

The Senior Community Service Employment Program would be transferred from USDOL to the Department of Health and Human Services.

7. Community College to Career Fund

The proposed budget includes $8 billion for a new legislative proposal designed to help community colleges train approximately two million workers. The program, which would be administered jointly by the USDOL and the Department Education, proposes to provide each department with $4 billion and includes the following elements.

- **Developing community college partnerships to train skilled workers for unfilled jobs:**
  The Fund will support community college-based training programs that will: expand targeted training to meet the needs of employers in growth and demand sectors; provide workers with the latest certified training and skills; and invest in registered apprenticeships and other on-the-job training opportunities. The Fund will also support paid internships for low-income community college students that will allow them to simultaneously earn credit for work-based learning and gain relevant employment experience in a high-wage, high-skill field. States will also be able to seek funding to support employer efforts to upgrade the skills of their workforce.

- **Instituting "Pay for Performance" in job training:**
  The Community College to Career Fund will support pay for performance strategies to provide incentives for training providers, community colleges, and local workforce organizations to ensure trainees find permanent jobs. For instance, states would be eligible for funding to support bonus programs for training programs whose graduates earn a credential and find quality jobs shortly after finishing the program. Pay for performance structures would provide stronger incentives for programs that effectively place individuals who face greater barriers to employment.

- **Bringing jobs back to America:**
  The Community College to Career Fund will allow federal agencies to partner with state and local governments to encourage businesses to invest in America. State and local governments will be able to apply for grants to encourage companies to locate in the U.S. because of the availability of training to quickly skill up the local workforce.

- **Training the next generation of entrepreneurs:**
  The Community College to Career Fund will support pathways to entrepreneurship for 5 million small business owners over three years through the nation's workforce system and its partners, including: a six-week online training course on entrepreneurship that could reach up to 500,000 new entrepreneurs and an intensive six-month entrepreneurship training program resulting in entrepreneurship certification for 100,000 small business owners.

DOL Appropriations
FY's 2010, 2011, 2012, Requested FY 2013
$ (000s)

	FY 2010 Comparable	FY 2011 Comparable	FY 2012 Comparable	President's FY 2013 Request	Diff FY 12 to FY 13
Training & Employment Services					
WIA Adult Employ & Tng	$860,116	$770,922	$770,922	$769,465	-$1,457
WIA Youth Activities	924,069	825,914	825,914	824,353	-1,561
Disl Wrks Employ & Tng	1,182,120	1,063,432	1,008,432	1,006,526	-1,906
Total	2,966,305	2,660,268	2,605,268	2,600,344	-4,924
State Set Aside *	444,946	133,013	130,263	130,017	-246
Federally Administered Programs					
Disl Wrks Nat'l Reserve	228,760	224,112	224,112	223,688	-424
Native Americans	52,758	52,652	47,652	52,562	4,910
Migrant & Seas FW	84,620	84,451	84,451	84,291	-160
Youth Build	102,500	79,840	79,840	79,689	-151
Workforce Innovation	0	124,500	50,000	100,000	50,000
National Activities					
Pilots, Demos, Research**	93,450	9,980	6,616	0	-6,616
Ex-Offenders	108,493	85,390	80,390	85,238	4,848
Evaluation**	9,600	9,581	9,581	0	-9,581
Data Quality	12,500	12,475	6,475	6,000	-475
Job Corps	1,701,823	1,706,171	1,706,171	1,650,004	-56,167
Unemployment Compensation					
State Operations	3,195,645	3,239,154	3,181,154	2,989,912	-191,242
National Activities	11,310	11,287	11,287	11,297	10
Employment Service					
State Administration	703,576	702,169	702,169	708,204	6,035
National Activities	20,994	20,952	20,952	20,952	0
Foreign Labor Certification	68,436	65,517	65,517	65,517	0
One-Stop/LMI	63,720	63,593	63,593	115,720	52,127
Bureau of Labor Statistics					
Employment Security Admin Acct	78,264	67,438	67,303	67,176	-127
Veterans Employment & Training					
State Admin Grants	165,000	165,063	165,394	170,000	4,606
Transition Assistance Program	7,000	6,986	9,000	12,000	3,000
Federal Admin	35,000	35,242	35,222	35,222	0
Training Institute	2,500	2,444	2,444	3,414	970
Homeless Veterans	36,000	36,257	38,257	38,257	0
Veterans Workforce Investment	9,600	9,622	14,622	0	-14,622

* State Set Aside was reduced from 15% in PY 2010 to 5% in PY 2011, PY 2012 and PY 2013

** The Secretary is authorized to, "reserve not more than 0.5 percent from each appropriation made available in this Act identified in subsection (b) in order to carry out evaluations of any of the programs or activities that are funded under such accounts.

USDOL FINANCIAL REPORING: OBLIGATIONS AND OUTLAYS

BACKGROUND

Financial reporting from USDOL's Employment and Training Administration is problematic for State Workforce Agencies because of a six-month time lag, leaving the impression that states are not obligating and spending their formula funds for Workforce Investment Act (WIA) programs. In addition, there is disagreement over the economic meaning of an "obligation." Substantial time might elapse between the obligation of funds for a given project, the actual provision of services resulting, the disbursement of cash (either from the federal government to a grantee or from a grantee to a subgrantee -- the point at which it becomes an 'outlay') to pay for the services provided, and the subsequent submission of the financial report to ETA.

Confusion over outlays and obligations led to Congressional action under Public Law 110-161 when Congress approved a $250 million rescission for Workforce Investment Act Programs. While the rescission was intended to apply to "unspent balances" from program years 2006 and 2007, a NASWA survey showed most states did not have "unspent funds" funds from those years and the funds were taken from program year 2008, just as the economy was entering the Great Recession in December 2007.

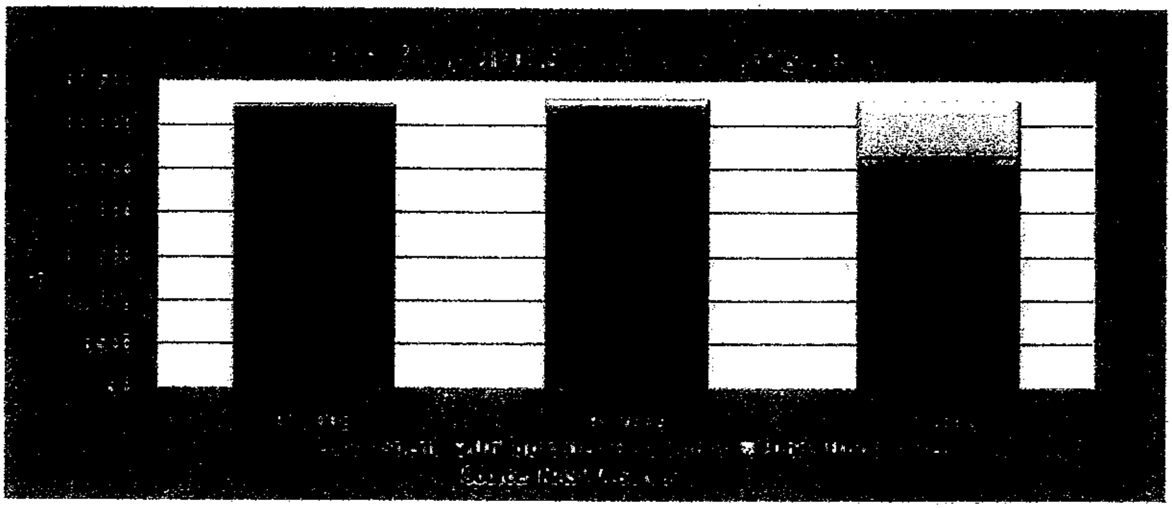
STATUS

States are spending their Workforce Investment Act funds much faster than required under the law, according to a NASWA analysis of U.S. Department of Labor (USDOL) data for the period ending June 30, 2011. The chart below shows by the end of Program Year (PY) 2010, states had spent virtually all funds allocated in PY 2008 and almost 98 percent of funds allocated for PY 2009. At the end of PY 2010 (June 30, 2011), states had roughly $630 million in "unobligated/unspent" funds from PY 2010 funds going into Program Year 2011.

The NASWA analysis shows the unobligated/unspent funds for all three program years is just over $700 million or about 7 percent of appropriated funds for the three years. By contrast, USDOL data suggests a much slower pace of spending, as they reported some $1.2 billion as unobligated/unspent for the June 30, 2011 period. USDOL financial reports do not take into account unliquidated obligations and treat them as if they are "unobligated." These funds (unliquidated obligations) are legally binding commitments made by states for which an accrued expenditure has not yet been booked. These and other terms are defined in Training and Employment Guidance Letter (TEGL) 28-10.

These reporting issues have created misunderstanding and confusion among states, USDOL, and Congressional staff on the House and Senate Committees on Appropriations. The issue carries serious implications as Congress is under the impression states are not spending their formula funds in a timely manner. This has led (in the past) to rescissions, and over the last two years, funding cuts to the workforce system. NASWA continues to work with USDOL to help resolve these differences so the most accurate picture of state spending can be provided to policy makers.

NASWA will share this information with USDOL and help officials there understand their data are out-of-date and overstate the amount of unobligated funds remaining that either could be spent on additional workforce services or used for other purposes.



WORKFORCE INVESTMENT ACT (WIA) REAUTHORIZATION

BACKGROUND

Over the last two years, Senate staff has been working in a bi-partisan effort to reauthorize the Workforce Investment Act (WIA). In June, 2011, staff representing **Senator Patty Murray** (D-WA), Chair of the Senate Health, Education, Labor and Pensions (HELP) Subcommittee on Employment and Workplace Safety; **Senator Johnny Isakson** (R-GA), Ranking Member of the Subcommittee; **Senator Tom Harkin** (D-IA) Chairman of the HELP Committee; and **Senator Mike Enzi** (R-WY), Ranking Member of the HELP Committee released draft legislation to reauthorize WIA. However, consensus could not be reached and the draft bill did not move through the committee process.

On December 8, 2011, Rep. Virginia Foxx (R-NC), chairwoman of the House Committee on Education and Workforce, Subcommittee on Higher Education and Workforce Training, introduced the *Streamlining Workforce Development Programs Act (H.R. 3610)*. The legislation consolidates 33 of the 47 job training programs identified in a 2011 report by the Government Accountability Office (GAO).

STATUS

It is highly unlikely the House and Senate can reach agreement on WIA reauthorization legislation in 2012. Senate Congressional staff had anticipated a quick mark-up of the draft legislation in June, 2011, but since that time there has been no movement.

Chairwoman Foxx's legislation, H.R. 3610, is designed to consolidate multiple employment and training programs into 4 workforce funds, which would be administered by state and local governments. However, strong opposition has been expressed by the House Committee on Veterans Affairs and further opposition would likely surface among the Senate Majority and advocacy groups because the legislation repeals the Wagner-Peyser Act.

Overall, the legislation does the following by consolidating workforce programs into the four following areas:

Workforce Investment Fund

- WIA Adult, Dislocated and Youth Activities (formula);
- Community Service Employment for Older Americans (formula);
- Employment Service (formula);
- H-1B Technical Skills Training (competitive);
- SNAP Employment & Training (formula);
- Environmental Workforce Development and Job Training Grant (competitive).

State Youth Workforce Investment Fund

- Job Corps (competitive);
- YouthBuild (competitive);
- National Guard Youth Challenge Program.

Veterans Workforce Investment Fund

- Disabled Veterans Outreach Program specialists (formula);
- Local Veterans Employment Representatives (formula);
- Veterans Workforce Investment Program (competitive);
- Homeless Veterans Reintegration Program (competitive);
- Transition Assistance Program (administrative).

Targeted Populations Workforce Investment Fund

- WIA Native American programs;
- WIA Migrant and Seasonal Farmworker programs;
- WIA Demonstration projects for dislocated workers;
- Grants to States for Workplace and Community Transition Training for Incarcerated Individuals;
- Tribal Work Grants (TANF);
- Indian Employment Assistance;
- Refugee and Entrant Assistance (3 programs);
- Second Chance Act Prisoner Reentry.

Repeal of Wagner-Peyser

The legislation repeals sections 1 through 13 of the Wagner-Peyser Act, eliminating the Employment Service (ES), but retaining the requirement to collect employment statistics. While there is nothing specific in federal UI law requiring states to use the ES, most states do rely on the ES to: (1) administer the work search requirements for UI eligibility and (2) administer and follow up on the worker profiling requirement.

BACKGROUND

On December 23, 2011, President Obama signed legislation (H.R. 3765) to extend the Social Security payroll tax cut, Emergency Unemployment Compensation (EUC08) and other programs for two months. The law also extends Temporary Assistance for Needy Families (TANF) and related programs, and Qualified Individual (QI) and Transitional Medical Assistance (TMA). The law also directed the forming of a House-Senate conference committee responsible for resolving differences between the House and Senate on a year-long extension of EUC and the Social Security payroll tax cut.

H.R. 3765 extends the EUC program and 100 percent federal financing of the Extended Benefit (EB) program for two months to March 6, 2012. The legislation adjusts the phase-out date of EUC benefits from June 9, 2012 to August 15, 2012. For workers on EB, the law moves the last day to apply for EB under the current 100 percent federal financing structure from January 4, 2012 to March 7, 2012. Similar to EUC, the law moves the phase-out date for EB from June 10, 2012 to August 15, 2012. Finally, it extends the three-year EB look-back provision included in P.L. 111-312 to February 29, 2012.

The law excludes some of the programmatic changes originally proposed by the House of Representatives such as a reduction in EUC benefits from 53 weeks to 33 weeks, new job search and reemployment service requirements for workers receiving UI, and repealing the American Recovery and Reinvestment Act (ARRA) non-reduction clause. This clause requires a state to maintain the amount, duration, and access to UI benefits to receive the EUC funding, 100 percent federal financing of EB, and the deferral of interest and credit reductions.

STATUS

With less than a month to reach a compromise, issues such as the length of the UI extension and whether the cost of an extension should be offset with spending cuts or revenue increases have dominated discussions. In addition, policy issues, such as whether recipients of unemployment insurance should be subject to drug testing and whether UI claimants should be required to earn the equivalent of a high-school diploma if they do not have one. In an effort to find consensus, the Chairman of the Senate Committee on Finance, Max Baucus, and (D-MT) offered to accept some provisions proposed by the House majority including jobs search assistance, reassessment of eligibility, reemployment services, overpayments/integrity and Short Time Compensation.

Senator Baucus' proposal includes the following elements:

Improved Work Search for the Long Term Unemployed
This proposal would establish uniform job search standards for beneficiaries eligible for federally-funded unemployment insurance benefits. (The Senate would accept subsection (a) of Section 2161 of H.R. 3630.) It would codify in the Social Security Act, as a condition of continued eligibility, the claimant must be able, available and actively seeking work in a systematic and sustained effort based on evidence satisfactory to the State agency. This provision does not apply to regular state benefits.

Reemployment Services and Reemployment and Eligibility Assessment Activities
With the exception of the GED provision, the Senate would agree to include the Eligibility Reassessment and Reemployment Services provision represented in both the Administration's proposal and Section

2162 of H.R. 3630. UI claimants would, as a condition of continued eligibility, have to participate in state reemployment activities.

Work-Sharing Proposal

The Senate would accept the Work Sharing legislation as proposed by Senator Jack Reed (D-RI) in S. 1333. The legislation amends the Internal Revenue Code to allow employers to reduce the workweek of their employees in lieu of layoffs. It also provides for federal financing of state short-time compensation programs and requires the Secretary of Labor to: (1) award grants to states that enact such programs; (2) develop model legislative language for use by states in developing, enacting, and implementing such programs.

Self-Employment Assistance

The Senate would accept the Self-Employment Assistance legislation as proposed by Senators Ron Wyden (D-OR) and Tom Carper (R-DE) in S. 1826. The legislation amends the Federal-State Extended Unemployment Compensation Act of 1970 to authorize states to establish a self-employment assistance program (a program to provide unemployed individuals with an allowance in lieu of extended unemployment compensation to establish a business and become self-employed).

Collect Overpayments of Federal Unemployment Benefits

The Senate would accept the portion of Section 2164 of H.R. 3630 that changes the word "may" to "shall" in Section 4005(c)(1) of the Supplemental Appropriations Act, 2008, requiring states to collect overpayments owed to the federal government from UI recipients.

UNEMPLOYMENT INSURANCE TRUST FUND SITUATION: REPAYMENT OF INTEREST AND LOAN BALANCES

BACKGROUND

As of February 2, 2012, some 28 state programs owed roughly $38 billion to the Federal Unemployment Account (FUA) of the Unemployment Trust Fund used to pay UI benefits to unemployed workers. The U.S. Department of Labor (USDOL) projected the aggregate loan balance will increase to a peak end-of-year balance of $43.6 billion for FY 2012.

STATUS

The Recovery Act temporarily waived interest payments and the accrual of interest on advances to state Unemployment Insurance programs from February 17, 2009 through December 31, 2010. But the provision expired on December 31, 2010, and USDOL estimates total interest on the loan amounts to be about $1.1 billion. State interest payments were due on September 30, 2011. Failure of a state to pay interest would render the state out of conformity with federal law and risk employers in the state being subject to the full Federal Unemployment Tax without a credit offset.

In addition, for borrowing states, the impact of the offset credit reduction affected a larger number of states in 2011 when employers were obligated to make their Federal Unemployment Tax Act (FUTA) tax payments in January, 2012. On November 10, 2011, states that borrowed from the federal Unemployment Trust Fund (UTF) account in 2009 were required to pay off the outstanding balances on those loans.

The credit reduction is 0.3 percentage points for the calendar year beginning with the calendar year in which the state misses the repayment deadline and increases by at least 0.3 percentage points for each year thereafter if the state still has an outstanding loan. In order to qualify for credit reduction avoidance, a state must pay the amount that the credit reduction would produce prior to November 10 of the year for which avoidance is to apply, repay all FUA loans received during the one-year period prior to November 10, increase solvency for the taxable year through legislative action by an amount equal to or greater than the amount of the FUTA credit reduction, and not borrow for a three-month period (November 1-January 31).

Employers in states that did not make this payment or did not qualify for credit reduction avoidance received a 0.3 percentage point reduction to the credit applied to their Federal Unemployment Tax Act (FUTA) tax rate for 2011. Some 21 states with outstanding UI loans had a reduction in the FUTA credit for 2011.

$500 MILLION SPECIAL DISTRIBUTION UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT (RECOVERY ACT)

BACKGROUND

The Recovery Act provided each state a share of $500 million based on each state's share of Federal Unemployment Tax Act taxable wages paid in 2007. States were to use the funds for the following purposes:

- Implementing and administering the provisions of state law that qualify the state for the Unemployment Insurance (UI) Modernization money;
- Improved outreach to individuals who might be eligible by virtue of these provisions;
- The improvement of Unemployment Insurance (UI) benefit and tax operations, including responding to increased demand for UI; and
- Staff-assisted reemployment services for UI claimants.

STATUS

On January 5, 2012, the Employment and Training Administration issued Training and Employment Guidance Letter (TEGL) 12-11. The TEGL encouraged states to spend their allotment from the $500 million special distribution under the Recovery Act. According to the TEGL, only $170.6 million of the $500 million had been spent by states.

While ETA cites concerns with the low "spend-down" rates, some of the unspent funds might be obligated already. NASWA believes that most states have plans in place to obligate and spend the remaining funds and surveyed UI and Finance Directors to learn how these funds are being spent and utilized. Results of the survey will be available at the end of February.

TRADE ADJUSTMENT ASSISTANCE

BACKGROUND

The TAA program was expanded as part of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) in the following ways:

- Expanded coverage to more workers and firms, including workers in service firms and workers whose jobs have been off-shored to any country;
- Increased training, health coverage, and other benefits available for TAA certified workers;
- Improved opportunities for training and increased flexibility in program requirements that allow more workers to participate in TAA; and
- Provided funding for employment services and case management to better assist trade-affected workers in finding new employment.

On October 18, 2011, President Obama signed into law (P.L. 112-40) the Trade Adjustment Assistance (TAA) Program largely as expanded in 2009 under the Recovery Act. Passage of TAA was linked to three pending trade agreements with South Korea, Colombia, and Panama.

STATUS

To help offset the cost of the legislation, three UI integrity provisions from the Administration's UI Integrity Act of 2011 were used. These three UI provisions would raise more than $346 million over ten years and include the following:

- Requires a mandatory penalty of not less than 15 percent for fraud overpayments. **This provision is of great concern to NASWA because it changes existing law so that any penalty amount collected must be deposited into the respective state UI trust fund accounts. Prior to enactment, states had the flexibility to use these funds for a number of programs and USDOL had promoted this provision as a way for states to use administrative funding for integrity purposes.**
- Requires employers to report rehires as well as new hires to the National Directory of New Hire database; and
- Prohibits states from relieving charges to an employer account if the agency determines the payment was made erroneously due to failure of an employer or its agent to respond to an agency request and the employer or agent has established a pattern of failing to respond or of providing inadequate information.

UNEMPLOYMENT INSURANCE ADMINISTRATIVE FUNDING
A Revenue Sharing Entitlement Grant to States For Unemployment Insurance Administration

BACKGROUND

Unemployment Insurance (UI) administrative funding is the level of funding Congress appropriates for grants to the states for "proper and efficient" administration of their UI programs as required under the Social Security Act. Since 1995, the Office of Management and Budget (OMB) has not increased the staffing costs used in their formulation of UI Administrative Grants to States to include inflationary increases, except for the 1 percent increase included in the FY 2010 appropriation to states.

As a result of this underfunding, States do not receive enough administrative funds to upgrade their computer systems and telephone call centers, hire more staff, and maintain their unemployment insurance infrastructure. When adjusted to constant 2000 dollars and normalized at two million average weekly insured unemployment, base funding for State Unemployment Insurance (UI) Administration is at its lowest levels since 1986. Workload increases in response to the Great Recession, coupled with inadequate staffing levels and outdated information technology (IT) systems, have led to decreases in UI program performance.

A workgroup, consisting of members from the Unemployment Insurance and Administrative and Finance Committees, worked for over a year to address this issue. The groups coalesced around a proposal to develop a revenue sharing entitlement grant. It was approved by the NASWA membership at the Annual Conference in September, 2010, in Madison, Wisconsin.

The proposal is similar to a Revenue Sharing Entitlement grant and would expand the "pie" for state UI administration because for each fiscal year states shall receive the higher of 50 percent of Federal Unemployment Tax Act (FUTA) revenue received by the federal government in the previous tax year or the amount determined by the Secretary of Labor necessary for "proper and efficient" administration of state unemployment insurance (UI).

The proposal has four parts and the Appropriations Committees would retain jurisdiction over (1) Base funding; (2) Above-base funding; and (3) Contingency funding. Only the last part of the proposal would be new mandatory entitlement spending that would have to be offset by new taxes or cuts in other mandatory spending according the pay-as-you-go expectations in the Congressional Budget process.

STATUS

On November, 10, 2011, NASWA Executive Director Rich Hobbie briefed the employer group UWC Board of Directors on the proposal to gain their support. Mr. Hobbie presented the proposal to UWC at their conference in St. Louis, Missouri, in June, 2011 where he asked for their support. Mr. Hobbie met with UWC leadership again at the UI Directors Conference in Providence, Rhode Island in October, 2011. The UWC Board voted unanimously to support the NASWA proposal with the proviso that NASWA work with UWC to develop a list of how states would spend the added funds and the positive effects employers could expect from such spending.

Mr. Hobbie said he planned to conduct a survey of state UI Directors to obtain specific information and would add that information to the description of the proposal. UWC also wanted the additional funds to be constrained to spending on UI integrity (including information technology) only. Mr. Hobbie said he thought that is what states would spend the funds on anyway, but also said he thought the NASWA membership could support such a provision as part of the proposal.

WORK OPPORTUNITY TAX CREDIT

BACKGROUND

The Work Opportunity Tax Credit (WOTC) expired at the end of 2011. It is one of many tax provisions, known as "extenders," that must be reauthorized annually by Congress.

STATUS

Reauthorization of WOTC is not likely to occur until Congress acts on "must pass" legislation, such as appropriations bills later this summer or before to the November elections.

In January, the U.S. Department of Labor (USDOL) issued Training and Employment Guidance Letter 15-11 providing guidance on the Work Opportunity Tax Credit (WOTC). The legislative authority to continue WOTC expired on December 31, 2011, for non-veterans. The Hire Heroes Act provided legislative authority for WOTC tax credits for veterans until December 31, 2012, but did not extend the other (non-veteran) WOTC target groups.

The USDOL guidance instructs State Workforce Agencies (SWA's) to continue accepting applications for the expired target groups after December 31, 2011, but delay processing the requests pending further legislative action and guidance from ETA. The guidance instructs SWA's to adhere to the following procedures:

- Accept and fully process all timely filed WOTC certification requests for employers' hires made before January 1, 2012.
- Accept, date stamp, log, and retain certification requests for employers' new hires made after January 1, 2012, until informed otherwise by ETA. However, states may not issue eligibility certifications unless the program is once again reauthorized.
- SWAs and participating agencies (PAs) should continue to issue Conditional Certifications (ETA Form 9062). States should notify all PAs of this guidance upon receipt of this advisory.
- **Voluntary Procedures:** SWA's may conduct all steps necessary to process certification requests up to, but not including, issuance of the actual certification or denial.

REDUCTION IN THE WIA STATE SETASIDE

BACKGROUND

Under the Full-Year Continuing Appropriations Act of 2011 (P.L. 111-10), Congress, with the support of the U.S. Department of Labor (USDOL), reduced the 15 percent set-aside for states by 10 percentage points under the Workforce Investment Act (WIA) and reallocated funds to the Administration's Workforce Innovation Fund (WIF) and to Local Areas. Consequently, the state set-aside was reduced from \$399 million to \$133 million for Program Years 2011and 2012. In addition, USDOL's Workforce Innovation Fund was reduced from \$125 million to \$50 million as part of the FY 2012 appropriations bill.

This issue does not involve new federal spending. Rather, it is a reallocation of state grants to the Secretary of Labor in an effort to create competitive grants to be awarded by the Secretary of Labor for innovative workforce activities. NASWA strongly opposed the grant program. States have been working across federal "program silos" for years and do not need the federal encouragement (through Innovation Grants) to initiate programs that made sense to them years ago when they began working with economic developers and educators.

STATUS

On June 16, 2011, NASWA President Bonnie Elsey sent a letter to Secretary of Labor Hilda Solis in opposition to the reduction in the state set-aside. Through a NASWA survey conducted in 2011, President Elsey made the following points below:

1. States developed many innovative programs with these funds, which the Administration failed to recognize when it proposed the reduction and reallocation.
2. States will not be able to fund innovations, new technology and multi-year and multi-partner projects and will not be able to perform some of the activities required by the Workforce Investment Act. Not being able to perform required activities because of the lack of funding makes these activities unfunded mandates.
3. As a result of this change, states are in the process of laying off critically important workforce system staff.
4. Due to this reduction in state set-aside funding, states probably will no longer be able to target at-risk populations, including youth, low-income workers, low-literacy workers, and recently released prisoners, as well as traditionally under-employed populations such as women, minorities, veterans, mature workers, and the long-term unemployed. With few exceptions, states spent or obligated nearly all of their funds. Funds not spent or obligated were either committed to paying salaries or rent during the current program year or prudently reserved to cover some outlays in the next program year as contingencies against a disruption in funding.