

**Maine Department of Labor  
Bureau of Unemployment Compensation**

**Basis Statement  
and  
Summary of Comments and Responses**

*Chapter 24: Approved Training*

The Rule explains the process for a training agency requesting prior approval of a training waiver and for a claimant requesting approval. The Rule explains the criteria that will be used by the Bureau of Unemployment Compensation (“Bureau” or “BUC”) to determine whether a training waiver will be granted, thus waiving the requirement that a claimant be able and available for work and searching for work in order to be eligible for unemployment benefits. In developing the changes to the Rule, the BUC looked to guidance from the United States Department of Labor.

This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082. The proposed Rules were posted on October 4, 2023. A public hearing was held on Tuesday, October 24 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. No public comments were received at the public hearings. Three sets of written comments were submitted by:

- Commenter # 1: Maine Equal Justice
- Commenter # 2: Peer Workforce Navigator Project
- Commenter # 3: Maine AFL-CIO

The public comment period ended on November 6, 2023.

The rule was reposted on February 21, 2024 for additional changes, in response to comments, with a comment period that ended on March 25, 2024, later extended to March 29, 2024. In the reposted rule, the section on prior approval of a training program was removed, as it is unnecessary and confusing. The additional changes clarified that claimants involved in training approved by the Bureau of Employer Services (BES) or the Bureau of Rehabilitation Services (BRS) pursuant to various federal and state laws qualify for the training waiver without further fact-finding or analysis. Thus, the rule is simplified and explains the process for a claimant to obtain a training waiver if the applicable training program has not been previously approved by BES or BRS.

Written comments were received on the reposted rule by:

- Commenter # 1: Maine Equal Justice
- Commenter # 2: Peer Workforce Navigator Project

All comments from Commenter #1 and Commenter #2 are identical.

## Summary of Public Comments and Responses

### 1. **New Section Recommended: Notice of and Access to Approved Training Opportunities.**

Commenters encouraged the Bureau to develop a web page solely devoted to education and training opportunities for workers eligible to receive UI benefits and that the final Commenters encouraged the Bureau to provide a link to a simplified application for approved training for multiple training programs when an individual first applies for UI, and at subsequent times that a claimant is notified of the work search and availability requirements of the UI program. Commenters asked that the final rule require notice of this information. (Commenters 1 and 2 and 3).

**Response:** It is not the purpose of the training waiver in the unemployment law to help claimants to obtain a waiver from the usual unemployment eligibility requirements of being able and available to work and conducting a work search. A separate bureau, the Bureau of Employer Services (BES), supports multiple training programs, including programs authorized by other state and federal laws, including the Trade Assistance Program, the Competitive Skills Scholarship Program (CSSP) and WIOA (Workforce Innovation and Opportunity Act). Each program has its own requirements, and individuals who contact BES or a Career Center requesting information about training opportunities are provided information appropriate to that individual. The MDOL website provides information about career development and training, and MDOL regularly posts training information on social media and in press releases. BUC is committed to exploring ways to provide more detailed referrals to BES services, including training, earlier in the UI claim series and on a consistent basis.

No changes will be made as a result of this comment.

### 2. **Section 2(B). Application for Approval (Training Program)**

We request that the rule require and include by reference a list of training programs approved by the Department that meet the criteria for approved training under this rule. (Commenters 1 and 2 and 3).

**Response:** The Bureau declines to put a link in the Rule, as it may become outdated. The commenter is correct that there is a list of approved providers, which includes the particular programs which have been approved for each approved provider. The Bureau of Employer Services (BES) is in the process of significantly updating this list, after which the list will continue to change.

The Bureau changed the rule, in new Section 2(A) to specify that BES will notify BUC when a person receiving unemployment benefits is in approved training. This is the current process, which is consistent with 26 M.R.S. §§ 1192 (6-A, 6-D and 6-E).

The Bureau further recognizes that for many years, training providers no longer seek to have training approved by the BUC solely for the purpose of claimants being eligible for

a training waiver. Instead, training is approved by the BES pursuant to legal requirements under each separate training program, such as TAA, CSSP or WIOA. Therefore, the Bureau will amend the rule to clarify this, and will delete the portion of the rule explaining for process for a training agency to request prior approval of a training program, as that process, for all practical purposes, is no longer under BUC but is part of BES. That portion of the rule is deleted because it is unnecessary and potentially confusing. Instead, the rule focuses on the process for an individual to request the BUC to approve a training waiver for a particular claimant, if that training is not “approved training” under one of the BES programs.

### 3. **2(B). Application for Approval (Training Program)**

Some commenters recommended that the rule requires that all program information, including the application, must be written in plain language and translated as required consistent with US DOL guidance. Alternatively, the commenters asked that the rule provide for the referral of individuals who need help with the application process to BES or the Peer Workforce Navigator Project. (Commenter 1 and 2 and 3).

**Response:** Although individuals who contact MDOL indicating an interest in training are referred to BES and training programs, it is not appropriate for that internal process to be a legal requirement in this Rule. The Bureau declines to refer claimants to the Peer Workforce Navigator Project in a Rule.

It is not necessary to include general federal requirements as to claimant notices in this particular rule. The Bureau currently sends a Babel Notice with all its eligibility decisions in 21 different languages. No changes are made as a result of this comment.

### 4. **2(C). Simplify the Individual’s application for approval in statutorily approved training programs.** Some commenters requested that any claimant who is or will participate in training through a statutorily approved program (listed below) not be required to complete another application for approval of training.

- The United States Trade Act of 1974 (19 USC 2296a et seq.)
- The Workforce Innovation and Opportunity Act (WIOA) (29 USC 3101 et seq.)
- The Governor’s Job Initiative (26 MRS §2031)
- The Competitive Skills Scholarship program (CSSP) (26 MRS §2033)

(Commenter 1 and 2).

**Response:** In response to this comment, the Bureau has amended the Rule to delete the Note that contained this information, and clarified that the Bureau of Employer Services or the Bureau of Rehabilitation Services will notify BUC as to individuals in approved training under those particular statutes. The Rule further clarifies that no additional fact-finding or analysis is required with respect for such approved training. This clarification is in new Section 2(A).

After the Rule was reposted with this change, the same Commenters requested additional changes as to the timing of this communication and notice to the claimants that UI work search and availability requirements do not apply,

**Response:** BUC agrees to make this change in policy and is working on mapping the full flow and identifying any gaps in the process, training, documentation, or otherwise. We decline to make this change in the rules.

#### **5. Claimants who must apply for training approval.**

Claimants who are not in the above statutorily approved training programs must apply to have their training approved by the Department. However, we request that the rule limit the information collected from the claimant. (Commenter 1 and 2).

**Response:** The current questionnaire was developed to cover different scenarios applying to individual applications to ensure the Bureau has sufficient information to quickly make a determination on the training waiver. Minor changes were made to new Section 2.B. as a result of this comment as part of the reposting.

After reposting with changes, the same Commenters appreciated the simplification of the application process. The Commenters then essentially reiterated Comment #1 above, asking for that at the start of a claimant's initial UI claim, information about the opportunity for training be provided.

**Response:** The BUC reiterates its response to Comment #1 above.

#### **6. Section 2(B)(ii) – Comments on reposted Rule**

Commenters requested that the question be removed that asks the following, because the BUC knows this information, and it is confusing: "Whether the claimant is claiming unemployment benefits or dislocated worker benefits." (Commenters 1 and 2).

**Response:** The BUC declines to make a change to the rule because it would require a system change.

The same commenters further requested that if the individual has exhausted their regular benefits at the time they apply for approved training, the rule make clear that the bureau must simultaneously determine eligibility for approved training and DWB.

**Response:** The BUC declines adding the above to the rule because both issues require separate applications and have separate eligibility requirements. When handling the training issue of someone who has exhausted regular UI adjudicators are already trained to take a DWB application as needed.

#### **7. 2(B)(iii) - – Comments on reposted Rule**

The commenters asked that the part of the question that asks "how the training program will assist the claimant in attaining his or her vocational goal" be removed. The commenters stated that a free-style justification of their training choice may be difficult. (Commenters 1 and 2).

**Response:** The BUC needs this question to determine whether the training class prepares the claimant for a profession that is stable and subject to growth. Sometimes a course title does not fully indicate or clarify the profession it will prepare the student for. The BUC will reconsider re-wording the application to ask what are the jobs or professions you will be able to obtain, look for, accept as a result of the training. No changes made as a result of this comment.

8. **Section 2(C)(v) / Section 2(B)(iv) after reposting. Participation Time.** Some commenters suggested that participation time need not be part of the application. (Commenters 1, 2).

Commenter 3 asks for part-time participation to satisfy the requirement for training approval.

After reposting (which contained no changes to this section), Commenters 1 and 2 requested that study hours be considered.

**Response:** The Bureau approves a training waiver for programs that the training provider states is a full-time program. As explained above, it is necessary to obtain information about participation time so that a single questionnaire covers all scenarios. Therefore, no change will be made to the Rule.

The BUC maintains its position that the waiver of those standard unemployment requirements applies only to claimants enrolled in full-time training programs. The training waiver allows benefits to claimants who are otherwise eligible for unemployment benefits to receive such benefits if they are in training, and eliminates the standard requirement for claimants to be searching for work and to be able and available for work. By requiring 12 class hours or 12 credit hours to be considered full-time training, the Rule recognizes the out of classroom time of two hours per credit hour. Part-time training does not necessarily interfere with a claimant's ability to conduct a work search and their availability for or ability to accept full time employment.

The BUC further responds that the 12 class hours or credit hours per semester already assumes a set number of study hours of 2 hours, making the commitment to training approximately 36 hours a week, or a full-time schedule, impacting the claimant's able and available status. A program that is considered full-time, but requires fewer than 12 class or credit hours, will come out during the fact-finding interview.

No change will be made the rule as a result of these comments.

9. **Section 2(C)(vi)/ Section 2(B)(v) after reposting. Remuneration.** Some commenters stated that this paragraph is unnecessary because remuneration in the form of wages or similar compensation will be reported on the weekly claim form, and is not a criterion for the approval of training. In any case where remuneration is considered, we note that any offset must be made in accordance with the methodology established at Sections 1043(17) and 1191(3) of Title 26.

We further note that the receipt of financial aid is also not a criterion for training approval and should not be requested in the application process. Indeed, federal law prohibits the

Department from considering the amount of federal financial aid, including work study, in determining eligibility for, or the amount of any public benefits, including UI due an individual. (Commenters 1 and 2).

**Response:** The request for information about remuneration helps to ensure that the offset for remuneration is properly applied, avoiding later denials for failure to report earnings, and overpayments. The Bureau agrees with the comment as to stipends and financial aid and will remove the references from the final Rule.

After reposting, the same commenters asked that the word “remuneration” be replaced by plain language.

**Response:** The final rule changes the word remuneration to “wages paid or other compensation” as a result of this comment.

#### 10. Section 2(B)(vi) sub-paragraph (b) after reposting.

After reposting, commenters requested that subparagraph (b) which requires a “complete description” of the training program be removed. Commenters further recommended that the question distinguish between the training “provider” and the particular program provided by the provider. For example, subparagraph (a) could request the name and address of the provider or organization providing the program (e.g SMCC, South Portland...) and subparagraph (b) could request a *brief* description of the program being offered by the provider along with a helpful prompt, eg. Nursing. This program trains people to become Registered Nurses; or XYZ Truck Driving School. This program trains people for long distance truck driving and prepares them for their class A license test. (Commenters 1 and 2).

**Response:** The BUC changed “complete” to “brief” in the final Rule. The BUC declined to make the other questions or add examples within the questions. As part of our UX re-design we are adding additional helper text. These comments / examples would be appropriate for those sections.

11. **Section 2(B)(vi) sub-paragraphs (d) and (e) after reposting.** Commenters requested removal of subparagraphs (d) and (e) and (f), which request information such as placement rates and accrediting institutions, if available. The addition of the words “if available” do not remove the issue of the questions being confusing and burdensome. The commenter said that it is easier for the BUC to research accreditation, so the claimant should not be required to do so, and paragraph (f) should be removed. (Commenters 1 and 2).

**Response:** The BUC agrees to remove d and e. The BUC declines to remove Subparagraph f, which becomes d.

#### 12. Section 2(C) after reposting. Hearing

Commenters asked that the word “hearing” be replaced with “fact-finding interview.” The Commenters further requested that the notice contain specific information. (Commenters 1 and 2).

**Response:** The BUC agrees to change the word “hearing” with “fact-finding interview” and has made this change in the final rule. The requested changes as to notice are already part of the fact-finding notice and no further changes will be made.

13. **Section 2(E).** This section requires that a new application for continuing programs be submitted annually at least four weeks prior to the next start date. If the claimant is required to reapply annually for approval, then the rule should require that the Department notify them of that fact at least 30 days prior to their re-application deadline. (Commenters 1 and 2).

**Response:** In the reposted rule, the BUC removed the requirement to submit a new application for continuing programs at least four weeks prior to the next start date. Claimants are required to know their obligations in order to obtain unemployment benefits, and it is not an appropriate use of Bureau time, resources, and programming changes to send certain claimants a reminder of their obligations.

14. **Section 3(A) Approval.**

Commenters found this section of the rule confusing, because it is not clear whether certain provisions apply to the approval of claimant applications, and which apply to applications from training providers for approval of their programs. (Commenters 1 and 2).

**Response:** As a result of this comment, to avoid potential confusion, in the reposted Rule, the Bureau distinguished between training approved by the Bureau of Employer Services or the Bureau of Rehabilitation Services under various state and federal rules, and the application process for individual claimants who are seeking a waiver for a particular training program which is not approved. As a practical matter, for many years, no training provider has sought pre-approval for an unemployment training waiver, but instead focusing on qualifying their training programs to be approved under TAA, CSSP, WIOA, and similar laws.

After reposting, the same commenters asked that subparagraphs ii and iii be combined, so that a proposed training with 12 class hours necessarily interferes with an ability to search for work or be able and available. The commenters further requested accommodations for people who must limit their participation in training because of a disability. (Commenters 1 and 2).

**Response:** The BUC added the 12 hours as a necessary requirement to obtain a training waiver (excepting fewer hours for a program considered full-time). Combining sections ii and iii in this manner makes the 12-hour requirement a presumption, which was not our intent. We decline to make this change.

If unemployment benefits are based on a regular schedule that is considered less than full-time, we will approve a training waiver if the number of class or credit hours are comparable to those regular work hours.

Example: If your unemployment benefits are based on 20 hours of regular employment, or 50% of a full-time position, we will approve a training waiver based on 50% of the required class / credit hours per the rule.

15. **3(A)(i). Training that removes or reduces barriers.** We greatly appreciate the important addition to this paragraph of “training that removes or reduces an existing barrier to sustainable employment...” including programs that provide for basic high school equivalency and support for those learning English as a second language. Clarifying that these programs are approvable will ensure that these basic foundational programs are available to workers who need them to become more sustainably employed or pursue a path leading to greater economic security. (Commenters 1, 2 and 3).

**Response:** Thank you for your comment. No changes are made as a result.

16. **3(A)(i) Occupational list, as titled in the rule, cannot be found with a diligent search.** The rule refers to the list of occupations in the CWRI publication “Selected Occupational Information for Employment and Training Program Design” as automatically considered stable or subject to growth. The Rule should include a link to a list so that it may be easily found. (Commenters 1 and 2).

**Response:** The Bureau declines to put a link in the Rule, as it may become outdated. The Bureau will consider these comments as it revises its application and web page. No changes are made as a result of this comment.

17. **3(A)(i) Occupational list** The Commenters appreciate the opportunity for claimants to present evidence to show that opportunity for job growth does exist in occupations that are not on the CWRI list. We suggest, however, a small change to the language used in this paragraph. As written, the rule says the claimant can only make this case if “CWRI is unable to perform an assessment.” This language leaves everyone (except CWRI staff) unclear as to whether the occupation doesn’t appear on the list because CWRI was “unable” to make the assessment. For clarity, we suggest “If an occupation is not on the [Title of Occupations] list prepared by CWRI, the applicant must be afforded the opportunity to show that the occupation is nevertheless stable or subject to growth.” We further recommend that there be minimal burden associated with providing this evidence and that the individual be referred to BES for assistance if needed. (Commenters 1, 2 and 3).

**Response:** In the reposted Rule, the Bureau added the following: “Before denying a training waiver under this paragraph, the applicant will be afforded the opportunity to show that the occupation is stable, subject to growth, or has a projected significant positive replacement rate.”



18. **3(A)(ii) and (iii) (Attendance).**

Commenters state that it appears that the intent of (iii) is that training requiring twelve (12) class hours per week or twelve (12) credit hours per semester, or the number of credits or class hours that the trainer provider or educational institution considers full time is be deemed to meet the criteria at paragraph (ii). Yet, paragraphs (ii) and (iii) are joined by an “and” indicating that both requirements must be met. Commenters requested that the “and” be changed to “or.” The commenters further requested that part-time training trigger the training waiver for some individuals.

(Commenters 1, 2 and 3)

**Response:** See response to comments above. The Bureau maintains that the training waiver is only available for full-time training.

19. **3(A)(iv). Program start date.** In this paragraph, the proposed rule requires that the training program begin within 30 days or less to be approved. Commenters requested more flexibility. (Commenter 1 and 2).

The Commenters request a similar change to the start date of the program in **Section 4(A).**

Another commenter asked for a decision in 30 days with an option for an additional 15 days if needed to obtain information that is not readily available. (Commenter 3).

**Response:** The training waiver affects the requirement for an unemployment claimant to search for work and to be able and available to work each week. The Bureau declines to extend the time frame for this waiver for more than 30 days before a training program begins in either Section 3((A)(iv) or Section 4(A),

20. **3(B) Degree granting programs.** The commenter states that “carefully scrutinize” is not an objective standard for approval and requests that this paragraph be deleted. (Commenters 1 and 2). No change was made in the reposted Rule, and the Commenters reiterated the comment after reposted.

**Response:** The Bureau agrees to change “scrutinize” to “review.”

21. **3(C) Remuneration.** Commenters reiterated their previous comments that under 34 USC § 1087uu, federal financial aid, including work study, should not be used in determining the amount of assistance provided by the UI program. (Commenters 1 and 2).

**Response:** The reposted rule was clarified that federal financial aid and work study do not count toward remuneration.

After reposting, the same Commenter requested simplified language.

**Response:** The final rule contains the requested simplified language:

*Any unemployment compensation or dislocated worker benefits otherwise payable to a claimant will be reduced by any amount paid to the claimant for time spent in the program. If this amount is less than the unemployment compensation or dislocated worker benefits otherwise payable, benefits shall be reduced by that amount, rounded to the nearest lower full dollar amount.*

*If such amount is greater than the amount of such benefits otherwise payable, no benefits shall be paid for so long as the claimant receives such amount.*

*In no event shall unemployment compensation or dislocated worker benefits be reduced under this paragraph by any:*

- i. Reimbursement for actual tuition or materials costs;*
- ii. Reimbursement for the actual cost of child care, transportation, or other indirect costs necessary to allow the claimant to participate in the program;*  
*or*
- iii. Federal financial aid or work study payments*

22. **3(D) Decision.** The commenters asked that the rule specify that the written decision, if a denial in whole or in part, includes enough specificity for the applicant to understand the basis for the decision. It should also be written in plain language and appropriately translated as noted above. In addition, the Commenters requested that decisions be made within 30 days of the date the application is received and, if training has already begun or will begin sooner, will expedite its decision so that it may be made as soon as possible. (Commenters 1 and 2).

**Response:** Bureau decisions as required by the Maine Administrative Procedures Act, have sufficient specificity. The Bureau tries to act on training waivers within a short time frame, but declines to put a requirement in the Rule. The Bureau further notes that approval of requests granted after the start date of the program become effective on the start date.

23. **4(A)** Commenters suggested that the Department (consistent with the BES CSSP rule) provide opportunity for the claimant to remediate their academic situation before terminating program approval. (Commenters 1, 2 and 3).

**Response:** The CSSP program allows a participant to remediate their academic situation before withdrawing financial support for the training program. The unemployment training waiver is different, and is an exception to the requirement that a claimant be searching for work and be able and available. The Bureau declines to make this change, as it would lead to the anomalous outcome that a claimant would receive a training waiver for a longer time period, and would be waived from their obligation to search for

work and be able and available, if they failed to make satisfactory progress in their training program.

24. **4(C) Training agency notification to Bureau of changes.** Commenters asked that the Bureau remove the last sentence of this paragraph which could have the effect of penalizing the claimant for the failure of the training agency to communicate with the Bureau. (Commenters 1 and 2).

**Response:** No change to the Rule as a result of this comment as the Bureau has discretion depending upon the circumstances.

25. **4(D).** We very much appreciate the specificity about break times in this paragraph. (Commenters 1 and 2).

**Response:** Thank you for your comment.

**26. Claimants in Certified Pre-Apprenticeship Programs and Registered Apprenticeship Programs**

The commenters recommended that a Certified Pre-Apprenticeship Program pursuant to 26 MRS §3213 and Registered Apprenticeship Programs pursuant to 26 MRS §3202 be deemed training with the approval of the Department with no further need for participants to apply for additional approval but for a determination of whether the job they are preparing for is stable and subject to growth under Section 3(A)(i) of this Chapter. (Commenters 1, 2 and 3).

**Response:** Registered apprenticeship programs are typically full-time, paid positions, and individuals in these programs may not necessarily be considered unemployed. Claimants in apprenticeship programs may not be eligible for unemployment benefits and therefore it would be confusing to add apprenticeship and pre-apprenticeship to the approved training Rule. However, the Bureau will consider registered apprenticeship and certified pre-apprenticeship programs as approved training if the claimant is unemployed and otherwise eligible for unemployment benefits. (i.e. the training is full-time and not paid.)