without the exhibits and signature pages, the cost is $20.50.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–22706 Filed 10–18–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice Announcing the Methodology To Distribute Outcome Payments to States for the Unemployment Insurance (UI) Reemployment Services and Eligibility Assessments (RESEA) Program in Accordance With Title III, Section 306(f)(2) of the Social Security Act (SSA)

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Announcement of the methodology to distribute outcome payments to States for the UI RESEA program for states meeting or exceeding program goals.

SUMMARY: The Department is announcing the final methodology to distribute RESEA outcome payments to states each fiscal year (FY) after FY 2020 as required by the SSA. On May 7, 2020, ETA published a notice in the **Federal Register** requesting public comment concerning the proposed methodology to distribute RESEA outcome payments to states each fiscal year (FY) after FY 2020. The notice presented a description of the proposed methodology and public comments were requested. The comment period closed on June 8, 2020. This notice summarizes and responds to the comments received and publishes the final allocation formula that will be used for FY 2021.

DATES: The RESEA outcome payments distribution methodology will be used for FY 2021 and will be based on FY 2020 RESEA program performance.

ADDRESSES: Questions about this notice can be submitted to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW, Room S–4524, Washington, DC 20210, Attention: Lawrence Burns, or by email at *DOL-ETA-UI-FRN@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Lawrence Burns, Division of Legislation, Office of Unemployment Insurance, at 202 693–3141 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Burns.Lawrence@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal-State UI program is a required partner in the comprehensive, integrated workforce system. *See* Workforce Innovation and Opportunity Investment Act (WIOA) section 121(b)(1)(B)(xi) (29 U.S.C. 3151(b)(1)(B)(xi). Individuals who have lost employment through no fault of their own and have earned sufficient wage credits, may receive unemployment compensation (UC) if they meet initial and continuing eligibility requirements. Beginning in 2005, the Department and participating state workforce agencies began addressing the individual reemployment needs of UC claimants and working to prevent and detect UC improper payments through the voluntary UI Reemployment and Eligibility Assessment (REA) program. In FY 2015, the voluntary Reemployment Services and Eligibility Assessment (RESEA) program replaced the REA program.

The Bipartisan Budget Act of 2018 (Pub. L. 115–123) (BBA), enacted on February 9, 2018, amended the SSA to create a permanent authorization for the RESEA program. A total of 49 states and jurisdictions operated a RESEA program in FY 2020. The primary goals for the RESEA program are: To improve employment outcomes for individuals that receive unemployment compensation and to reduce average duration of receipt of UC through employment; to strengthen program integrity and reduce improper payments of UC by states through the detection and prevention of such payments to individuals who are not eligible for such compensation; to promote alignment with WIOA's broad vision of increased program integration and service delivery for job seekers, including claimants for UC; and to establish RESEAs as an entry point into other workforce system partner programs for individuals receiving UC.

II. Background

The RESEA provisions are contained in Section 306 of the Social Security Act (SSA) (42 U.S.C. 506). In addition to program requirements, Section 306, SSA, contains provisions for the funding of the RESEA program. The law specifies three uses for the funding and designates the proportion of annual appropriations to be assigned to these uses: (1) Base funding for states to operate the RESEA program (89 percent for fiscal years 2021 through 2026, and 84 percent for fiscal years after 2026); (2) outcome payments designed to reward states meeting or exceeding certain criteria (10 percent for fiscal years 2021 through 2026, and 15 percent for fiscal years after 2026); and (3) up to one percent for the Secretary of Labor to conduct research and provide technical assistance to states. Additionally, the law requires the Department to develop a methodology to allocate and distribute base funding and outcome payments to states beginning in FY 2021. On August 8, 2019 the Department published a notice announcing the methodology for distribution of base funding at 84 FR 39018.

Section 306(f)(2)(A), SSA, requires ETA to make ''outcome payments'' to states that meet or exceed the outcome goals for reducing the average duration of receipt of UC by improving employment outcomes. The law specifically states:

> IN GENERAL.—Of the amounts made available for grants under this section for each fiscal year after 2020, the Secretary shall reserve a percentage equal to the outcome reservation percentage for such fiscal year for outcome payments to increase the amount otherwise awarded to a State [for base funding under paragraph (f)(1)]. Such outcome payments shall be paid to States conducting reemployment services and eligibility assessments under this section that, during the previous fiscal year, met or exceeded the outcome goals provided in subsection (b)(1) related to reducing the average duration of receipt of unemployment compensation by improving employment outcomes.

As described further in Section IV, ETA will be using several data sources to identify states eligible for RESEA outcome payments. These data sources include the ETA 5159 ''Claims and Payment Activities'' Report (OMB No. 1205–0010, expires April 30, 2022), which will be used to determine changes in UC duration, and RESEA data reported by the Wagner-Peyser Act-funded Employment Service program (ES program). The Wagner-Peyser data is transmitted to ETA via the Workforce Integrated Performance System (WIPS), and the specific data elements and reporting format are specified by the Participant Individual Record Layout (PIRL), (ETA Form 9172 (OMB No. 1205–0521, expires June 30, 2024)). RESEA-specific data reported under Wagner-Peyser Employment Service reports will be used to identify states with improved employment outcome for RESEA participants.

III. Response to Public Comments

ETA received a total of six comments from four commenters concerning the RESEA outcome payment distribution methodology. These comments include: Three comments expressing concerns regarding the unknown impact of the COVID–19 pandemic on RESEA program performance and requesting that ETA either delay implementation of RESEA outcome payments or develop a temporary alternative methodology; one comment expressing concerns about ensuring that states have sufficient time to prepare reporting and other process changes that may be necessary to implement performance outcome payments; one comment requesting ETA consider excluding exhaustion rates in its proposed regression formula that will be used to determine RESEA targets because variations in states' UI adjudication processes may impact performance calculations; and one comment requesting that ETA consider assessing UI duration using RESEA participant data only. The following is a summary of these comments and ETA's responses.

A. Delayed Implementation or Alternative Allocation Methodology

Three commenters expressed general concern regarding implementation of performance based outcome payments during a time when the total impact of the COVID–19 pandemic on RESEA program performance is unknown. One of the commenters requested ETA to provide broad considerations to states negatively impacted by COVID–19 pandemic. Two commenters recommended that ETA delay implementation of performance based payments or consider alternatives such as allocating outcome payments across all states or modifying the award methodology to expand potential eligibility to more states.

ETA Response

As described in Section II above, the timeline for implementing performance based outcome payments is established in the SSA. ETA does not have authority to delay implementation of RESEA outcome payments. ETA is using a modified implementation strategy as discussed more fully below. This modified strategy includes a transition period that leverages RESEA data already collected by the ES program and previously negotiated performance targets for the ES program to inform outcome payments. ETA will continue to use available RESEA-subset information from the ES program data to build regression models based solely on RESEA data that take into account state-specific variables from other UI performance reports as applicable. These RESEA regression models will be used to set RESEA specific targets for future outcome payments.

B. Ensuring Sufficient Time for State Reporting and Program Modifications

One commenter indicated that states will need adequate time to prepare for the reporting and process changes to accurately report if the Reemployment rate in the 2nd quarter after program exit targets were met or exceeded.

ETA Response

ETA is using this notice to provide final notification of the outcome payment methodology. As described further in Section IV, the final outcome payment methodology uses data that is already being collected and does not introduce any new reporting requirements. States have a preexisting responsibility to maintain adequate processes and procedures to ensure the accurate and timely reporting of the data being used to determine the outcome payments.

C. Excluding Exhaustion Rates From Regression Analysis

One commenter requested ETA to consider excluding exhaustion rates in its proposed regression formula that will be used to determine RESEA targets because variations in states' UI adjudication processes may impact performance calculations.

ETA Response

ETA recognizes that there are variations across states in UI program requirements, processes, benefit levels, eligibility requirements, and state labor market conditions and that some of these variations may have an impact on RESEA performance. Recognizing the existence of these variations across states, ETA has selected a regression-model approach to setting state-specific RESEA targets because the regression model will reflect state specific variables that may be affected by economic conditions and state laws and policies.

D. Limiting Duration Data

One commenter requested that ETA consider assessing UI duration using RESEA participant data only.

ETA Response

UI duration is a statutorily required factor in determining eligibility for RESEA outcome factors. Given that improvements in UI duration resulting from reemployment interventions, such as RESEA, are small and typically range from a few days to a couple weeks, it is necessary to assess UI durations using a large sample size of data. Therefore, the measurement of improvements in duration currently uses data for all UI claimants. This approach may be reassessed if the number of claimants served by RESEA grows substantially in future years.

IV. Methodology To Determine States Eligible For Outcome Payments

ETA developed a three-step approach to determine whether a state is eligible for RESEA Outcome Payments. The approach reflects RESEA's statutory purpose, as defined in Section 306(b)(1), SSA, to improve employment outcomes of individuals who receive UC and to reduce the average duration of receipt of UC through employment. The three-step approach includes:

1. Evaluation of state reemployment performance using RESEA-subset data collected by the ES program and reported to ETA via WIPS using parameters identified in the PIRL to determine if a state met or exceeded the state-specific reemployment target. As an interim measure, ETA will use each state's Wagner-Peyser program negotiated target for the Reemployment Rate in the 2nd Quarter After Program Exit Quarter as the RESEA reemployment target. As more RESEA data is collected in the coming years and regression models are refined, ETA will develop RESEA-specific targets and discontinue the use of the Wagner-Peyser negotiated target for Reemployment Rate in the 2nd Quarter after Program Exit Quarter (*see* Step 1 of this notice (below) for additional details).

2. Evaluation of the state's Average UI duration to determine if the state met or exceeded the state-specific targets that have been established for UI Duration based on a regression model that is adjusted to reflect state-level variations that may impact performance, such as differing state UI processes and requirements and economic conditions (*see* Step 2 of this notice (below) for additional details).

3. Award Allocation. ETA will base the assessment on the previous fiscal year (typically the full period of October 1 through September 30). While this proposed assessment period for the outcome payments differs from the RESEA program performance year (January to December), it aligns with the assessment period described in Section 306(f)(2), SSA, and provides for the necessary time for data collection, reporting, analysis, and award within the authorized time period for federal

obligation of RESEA funds. For example, FY 2021 RESEA funds must be obligated to states by December 31, 2021. *See* Consolidated Appropriations Act, Public Law 116–260, Division H, Title I, State Unemployment Insurance and Employment Service Operations (SUIESO) paragraph (1).

Step 1: RESEA Reemployment Measure

To be considered eligible to receive an outcome payment, a state must first meet or exceed its state-specific reemployment target for the Reemployment Rate in the 2nd Quarter After Program Exit.

Further details on the UI and RESEA performance measures, including the 2nd Quarter after Program Exit Quarter for RESEA Program Participants discussed above, are outlined in Unemployment Insurance Program Letter (UIPL) No. 7–21 at the following link: *https://wdr.doleta.gov/directives/attach/UIPL/UIPL_7-21.pdf.*

Data used to assess RESEA reemployment performance is collected by the ES program and transmitted to ETA via WIPS. The PIRL (ETA Form 9172 (OMB No. 1205–0521, expires June 30, 2024)) identifies specific data elements and the required reporting format for WIPS. The PIRL includes specific elements that enable ETA to excerpt RESEA-specific data from the Wagner-Peyser reports. RESEA operating guidance requires all RESEA participants to be co-enrolled in the ES program. Therefore, all individuals receiving services through the RESEA program should be represented in the ES data set. Additional information on the PIRL elements can be found in the ''DOL-only PIRL'' at the following link: *https://www.dol.gov/agencies/eta/performance/reporting.*

As discussed in Section IV.i. of this notice, ETA will initially measure RESEA reemployment performance by using each state's negotiated levels of performance for ES program participants. These performance targets are generated by the WIOA Statistical Adjustment Model required under Section 116(b)(3)(viii), WIOA (29 U.S.C. 3141(b)(3)(viii)). The Department established this Statistical Adjustment Model as an objective statistical regression model to adjust individual state-negotiated levels of performance using actual economic conditions and the characteristics of participants served at the end of the performance period. The model will be updated and refined with ongoing use and application as additional quarters of WIOA outcome data become available. More detailed information on the Statistical Adjustment Model is available at the Department website: *https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3430.*

ETA will announce the negotiated targets applicable to the performance period thorough separate guidance to be issued as a joint Unemployment Insurance Program Letter and a Training and Employment Guidance Letter. States that do not meet or exceed the criteria for this measure will be eliminated from the outcome payment pool and will not proceed to the next step of performance outcome analysis.

Also as discussed in Section IV.i. of this notice, as more RESEA data is collected and regression models are refined, ETA will develop RESEA-specific targets. These performance targets that are more tailored to the RESEA program will then be used in place of the established Wagner-Peyser program targets prospectively.

Step 2: UI Duration

States that meet or exceed their targets established for the RESEA Reemployment Measure (Step 1) must also demonstrate reduced average UI duration to be considered for outcome payments. Average UI duration is defined as ''The number of weeks compensated for the year divided by the number of first payments in the year.'' [1] The performance period used to evaluate UI duration will be the same four-quarter period ending September 30 as the reemployment measure, and will be computed using data reported by states on the ETA 5159 Report (OMB No. 1205–0010, expires April 30, 2022).

Because UI duration can be impacted by factors such as changes in the economy or variations in state UI laws and processes, it is necessary to use a regression model to achieve consistency across states in setting state-specific targets. Therefore, ETA has developed a regression model to estimate a state's average duration that incorporates state-specific explanatory variables. The following variables allow the model to develop state estimates for UI duration that are unique to a state based on its localized economic conditions:

- Total Unemployment Rate—the number of unemployed people as a percentage of the labor force; [2]
- Potential Duration of UC—the number of full weeks of benefits for which a claimant is eligible within a benefit year; [3]
- UI Exhaustion Rate— the average monthly exhaustions divided by the average monthly first payments; [4]
- Average state weekly benefit amount payment—the total amount of benefits paid divided by the total number of weeks compensated; [5] and
- Year-to-year change in payroll employment (nonfarm payroll)—the total number of persons on establishment payrolls employed full- or part-time who received pay for any part of the pay period which includes the 12th day of the month.[6]

The regression model generates the projected average UI duration for each state and compares it to each state's actual average UI duration. If a state's actual average UI duration is lower than the state's projected average UI duration provided by the regression model, the state will have demonstrated a reduction in UI duration. A state that does not demonstrate a reduction in UI duration as described above will be eliminated from the outcome payment pool. The regression model will be updated each year to incorporate changing state conditions.

Step 3: Award Allocation

Once the pool of eligible states is identified after completing Steps 1 and 2, ETA will distribute the funds reserved for outcome payments. Recognizing that the intent of the outcome payments is to both award performance and serve as an incentive to states to improve service delivery, ETA will apply an award methodology that allocates funding in amounts that reflect the size of the RESEA programs operating in each state. Specifically, ETA will allocate outcome payments using a modified version of the RESEA base funding allocation methodology described in section IV of 84 FR 39018, the **Federal Register** Notice announcing the RESEA base allocation formula. This modified methodology will use the combined Insured Unemployment Rate (IUR)-Civilian Labor Force (CLF) weighting factor described in section IV of the Notice. However, the base funding provisions described in sections V–VII of the Notice (hold-harmless, minimum funding, and carry-over threshold) will not be applied because outcome payments are based on performance and will vary from year to year.

ETA's approach of allocating outcome payments using a modified version of

[1] *https://oui.doleta.gov/unemploy/content/data_stats/datasum99/4thqtr/gloss.asp.*

[2] *https://www.bls.gov/cps/cps_htgm.htm#definitions.*

[3] *https://wdr.doleta.gov/directives/attach/ETAH/ETHand401_5th.pdf,* page I–2–24, Section 2(B)(a).

[4] *https://oui.doleta.gov/unemploy/content/data_stats/datasum99/4thqtr/gloss.asp.*

[5] *https://wdr.doleta.gov/directives/attach/ETAH/ETHand401_5th.pdf,* page I–6–59, Section 2(B)(a)(1).

[6] *https://www.bls.gov/bls/glossary.htm#P.*

the base funding formula is intended to ensure awards are large enough to act as an incentive to states to improve RESEA performance but also prevent inundating small state programs with excessively large awards that cannot be expended within the period of performance or providing a large state program with a small award for which any potential benefit would be outweighed by the administrative burden of implementation.

Outcome Payments Distribution Timeline

Section 306(f)(2)(A), SSA, requires the Department to make outcome payments based on RESEA outcomes reported for the previous fiscal year starting in FY 2021. There are several timing issues associated with calculation of the performance to enable the outcome payments. First, the period of performance for RESEA is January 1 through December 31. The reemployment outcomes data has a four-quarter lag (three quarters for reemployment outcomes to be available, and one quarter for state reporting). In order to allow time for necessary data collection and analysis, the distribution of outcome payments will occur in December of the FY following the year in which the RESEA grant funds are awarded. For example, the outcome payments for FY 2021 will be made to states by December 31, 2021.

Due to the impact of COVID–19 on state RESEA program operations, the performance period was modified from the complete FY 2020 to October 2019 through March 2020 to capture state performance under normal pre-pandemic conditions. The following schedule applies solely to the award of FY 2021 outcome payments:

- Data for performance period October 2019 through March 2020, which became available for ETA review in May 2021;
- The pool of eligible states will be determined using the methodology outlined in Steps 1 and 2 above; and
- Outcome payments will be distributed no later than December 31, 2021.

V. Conclusion

The RESEA outcome payments distribution methodology articulated in this notice will be utilized with respect to FY 2021 for distribution in December 2021.

Signed in Washington, DC.

Angela Hanks,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2021–22704 Filed 10–18–21; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the annual Labor Surplus Area list for Fiscal Year (FY) 2022.

DATES: The annual LSA list is effective October 1, 2021, for all states, the District of Columbia, and Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Samuel Wright, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Avenue NW, Room C–4514, Washington, DC 20210. Telephone: (202) 693–2870 (This is not a toll-free number) or email *wright.samuel.e@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subpart A. These regulations require the Employment and Training Administration (ETA) to classify jurisdictions as Labor Surplus Areas (LSAs) pursuant to the criteria specified in the regulations, and to publish annually a list of LSAs. Pursuant to those regulations, ETA is hereby publishing the annual LSA list.

In addition, the regulations provide exceptional circumstance criteria for classifying LSAs when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Eligible Labor Surplus Areas

A LSA is a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period. ETA uses only official unemployment estimates provided by the Bureau of Labor Statistics in making these classifications. The average unemployment rate for all states includes data for the Commonwealth of Puerto Rico. The LSA classification criteria stipulate a civil jurisdiction must have a ''floor unemployment rate'' of 6 percent or higher to be classified a LSA. Any civil jurisdiction that has a ''ceiling unemployment rate'' of 10 percent or higher is classified a LSA.

Civil jurisdictions are defined as follows:

1. A city of at least 25,000 population on the basis of the most recently available estimates from the Bureau of the Census; or
2. A town or township in the States of Michigan, New Jersey, New York, or Pennsylvania of 25,000 or more population and which possess powers and functions similar to those of cities; or
3. All counties, except for those counties which contain any type of civil jurisdictions defined in ''1'' or ''2'' above; or
4. A ''balance of county'' consisting of a county less any component cities and townships identified in ''1'' or ''2'' above; or
5. A county equivalent which is a town in the States of Connecticut, Massachusetts, and Rhode Island, or a municipio in the Commonwealth of Puerto Rico.

Procedures for Classifying Labor Surplus Areas

ETA issues the LSA list on a fiscal year basis. The list becomes effective each October 1, and remains in effect through the following September 30. The reference period used in preparing the current list was January 2019 through December 2020. The national average unemployment rate (including Puerto Rico) during this period is rounded to 4.45 percent. Twenty percent higher than the national unemployment rate during this period is rounded to 5.34 percent. Since the calculated unemployment rate plus 20 percent (5.34 percent) is below the ''floor'' LSA unemployment rate of 6 percent, a civil jurisdiction must have a two-year unemployment rate of 6 percent or higher in order to be classified a LSA. To ensure that all areas classified as labor surplus meet the requirements, when a city is part of a county and meets the unemployment qualifier as a LSA, that city is identified in the LSA list, the balance of county, not the entire county, will be identified as a LSA if the balance of county also meets the LSA unemployment criteria. The data on the current and previous years' LSAs are available at *www.dol.gov/agencies/eta/lsa.*