



# State UI Conformity Issues

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# RECENT Congressional Action about UI





# **CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS**

New Federal requirements

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## Achieving a Better Life Experience Act of 2014

- Requires a certified PEO to be treated as the employer of work site employees for Federal employment tax & other purposes.
- Requires certified PEOs to be eligible for FUTA tax credit with respect to SUTA payments made.

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## Achieving a Better Life Experience Act of 2014

- Requires states to permit certified PEOs to collect & remit SUTA contributions.
- Effective for tax year 2016.
- States will not be required to recognize PEOs or change their laws concerning which entity is considered the employer for UC purposes.

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## Preparation for Implementation

- IRS developing procedures to certify PEOs & collect info needed so that FUTA credit goes to certified PEOs.
- ETA is developing guidance for states.
- States must ensure certified PEOs may collect & remit SUTA contributions.
- States may want to consider aligning their definition of a PEO with the Federal certified PEO.



# MERIT STAFFING

“Requirement “ in Federal UI Law



## Merit Staffing: In General

- Section 303(a)(1), SSA: Methods of administration to insure full payment of UC when due, including establishment & maintenance of personnel standards on a merit basis.
- Concerns selection, advancement, & retention of employees based on their ability, knowledge & skills.
- Protects against coercion for political purposes.
- Enables proper & efficient administration of state UC law (Section 303(a)(8), SSA).



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## Positions that Must Be Merit Staffed

- UIPLs 12-01 and 12-01, Change 1: Almost all functions that are inherently governmental, such as adjudication, deciding appeals, determination of tax liability, tax assessment, and administration of public trust funds must be merit staffed.

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# Exceptions to Merit Staffing Requirement

- States only permitted to exclude:
  - Positions that are not inherently governmental (e.g. janitorial services, IT support)
  - Very few inherently governmental positions involving political leadership, policymaking, or legal counsel.

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## Supervisors of Merit Staffed Employees

- To ensure merit-staffed employees are free from coercion (or the appearance of coercion) so they can properly administer the state's UC law and make UC payments when due, individuals who directly supervise merit-staffed employees must be merit staffed.



# CONFIDENTIALITY 101

A brief overview of UI confidentiality & disclosure requirements

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# Confidentiality Requirements

- Based on Section 303(a)(1), SSA:  
Methods of administration to insure full payment of UC when due.
- Must maintain confidentiality of any UC info that reveals (or combined with publicly available info would reveal) name or any identifying particular about any individual or any employer.
  - Includes claim info & wage records.
- Disclosure of such info barred unless mandatory or permissible to do so.

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## Confidential UC Information

- Information in the records of a state or state UC agency that pertains to administration of state UC law
  - Wage records
  - Employer information
  - Claim information, such as:
    - Whether an individual has applied for UC
    - An individual's contact information
    - Other information that is needed to verify eligibility for and amount of benefits

# Types of Disclosure

- Mandatory disclosures – 20 CFR Part 603.6
  - Information necessary for proper and efficient administration of the UC program
  - TANF, child support enforcement, HUD, SNAP, and other Federal programs
- Permissive disclosures – 20 CFR Part 603.5
  - The regulation permits disclosure under certain circumstances as long as the disclosure does not interfere with the proper and efficient administration of the UC program
  - Example: disclosures to public officials for use in the performance of their official duties

## Disclosure to Public Officials

- Section 603.5(e) permits disclosures of confidential UC data to public officials for use in the performance of official duties.
- Section 603.2(d) defines “public official” as:
  - an official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law; or
  - An elected official in the Federal, State, or local government.





## Performance of Official Duties

- Section 603.5(e) defines “performance of official duties” as:
  - Administration or enforcement of law; or
  - Execution of the official responsibilities of a Federal, State, or local elected official.
- Federal program performance reporting purposes by itself doesn’t necessarily meet this definition.

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# Data Sharing Agreements

Requirements include:

- Specific purpose of disclosure
- Specified redisclosures, if any
- Data safeguards
- Payment of costs



# **DISCLOSURES NEEDED UNDER WIOA**

How to get wage records to entities that need them

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## WIOA & Confidential UC Information

- Use of wage records mandatory for performance measurement purposes.
- Disclosure of confidential UC information mandatory for DOL and ED evaluations of employment related programs.
- Working to improve access to data.

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## Proposed Amendments to 20 CFR 603

- Expand definition of “public official”
  - Public post-secondary educational institutions
  - Performance accountability and customer information agencies
  - Chief elected official of a local Workforce Development Area
  - State educational authority, agency, or institution

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## Proposed Amendments to 20 CFR 603

- Expand definition of “permissible purpose”
  - State & local performance accountability under sec. 116, WIOA, including eligible training provider performance accountability
  - Requirements of Federal discretionary grants awarded under WIOA
  - As otherwise required for education or workforces training performance accountability & reporting under Federal or state law.

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## Proposed Amendments to 20 CFR 603

- Mandatory disclosures necessary for cooperation in evaluations & research provided for by DOL or ED under specified sections of law.
- Disclosure “to the extent practicable” means that it would not interfere with the efficient administration of state UC law.



# WRIS AND WRIS2

How aggregate data can accommodate most performance-related needs



## What is WRIS?

- Wage Record Interchange System (WRIS) facilitates exchange of aggregate wage data among participating states primarily for:
  - Assessing & reporting on state & local employment & training program performance
  - Evaluating training provider performance
- WRIS enables state workforce program performance agencies to find out if participants found a job in another state.

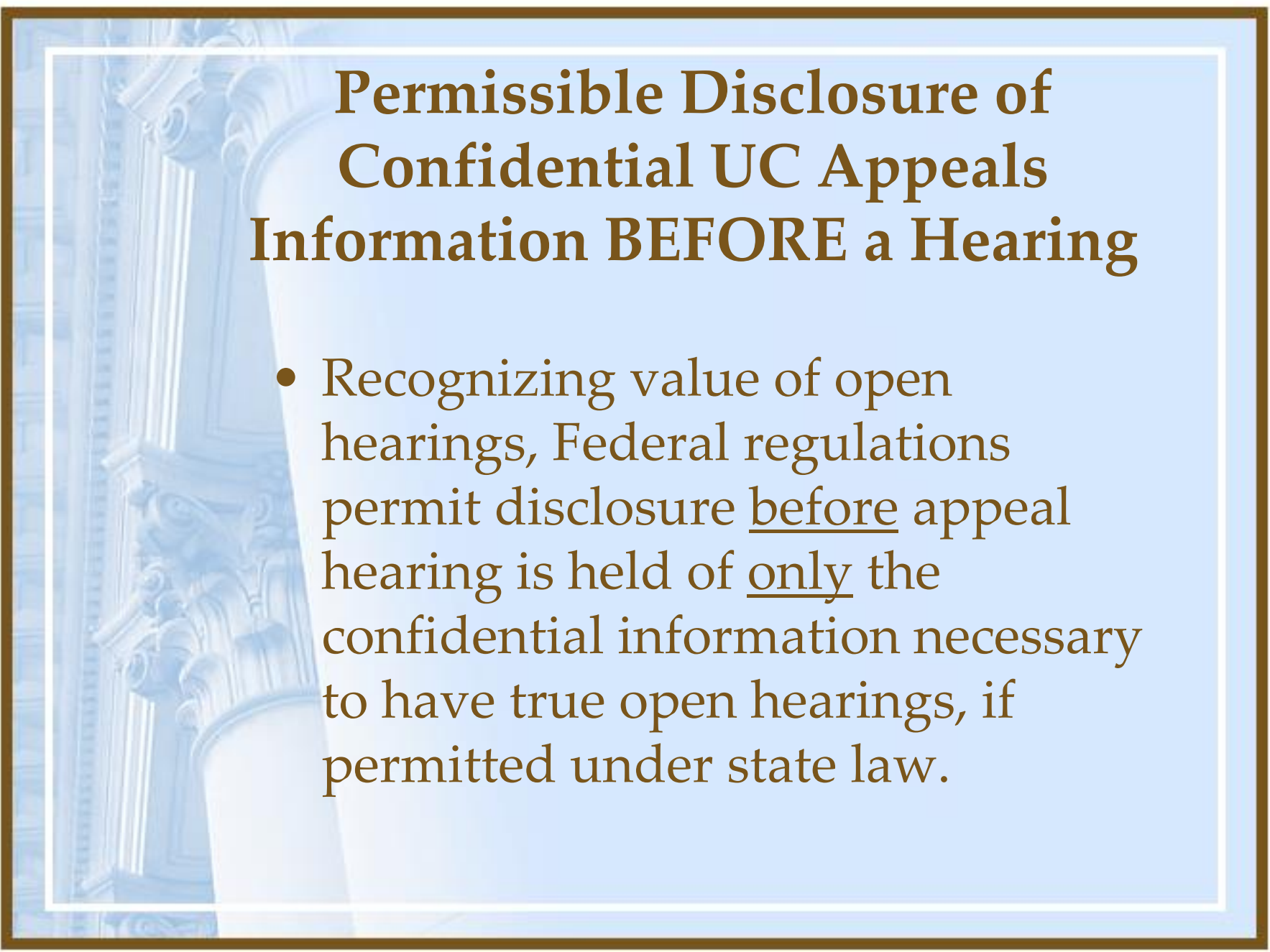
## What is WRIS 2?

- Wage Record Interchange System 2 (WRIS 2) extends WRIS data sharing model to required & additional (optional) partner programs in American Job Centers not under DOL jurisdiction.
- Facilitates preparation of performance reports, Aggregate Statistical Reports, & research & evaluation of programs while maintaining confidentiality of personal identifiable information (PII).
- 35 states are currently participating in WRIS 2.



# **DISCLOSURES & UI APPEALS**

How are the rules different?



## Permissible Disclosure of Confidential UC Appeals Information BEFORE a Hearing

- Recognizing value of open hearings, Federal regulations permit disclosure before appeal hearing is held of only the confidential information necessary to have true open hearings, if permitted under state law.

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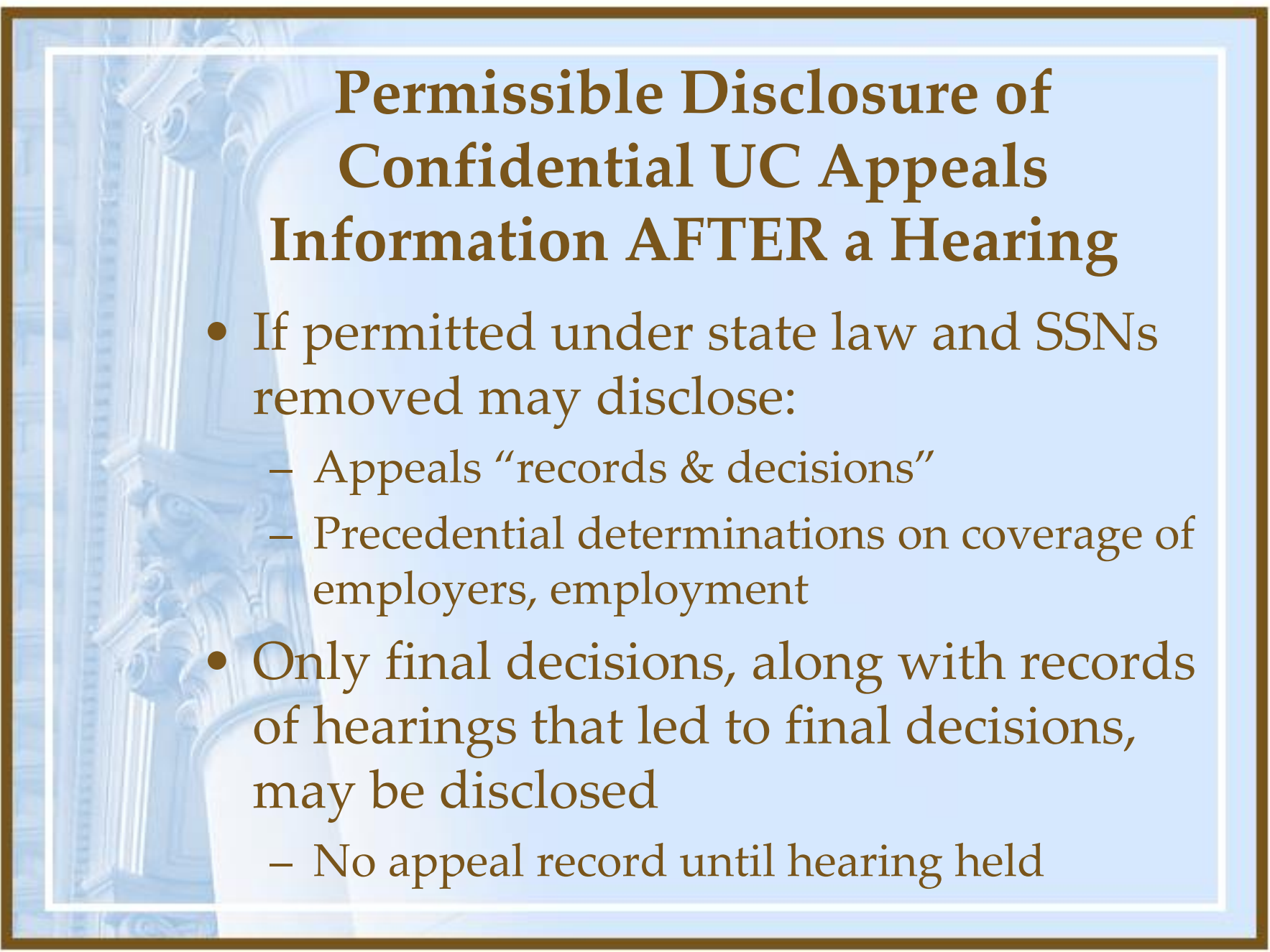
# Appeal Hearing Dockets

- May contain:
  - Names of the parties
  - Date, time, and place of the hearing
- May **not** contain:
  - Any case-specific information, such as the reason for separation
  - Any other PII such as claimant or employer addresses or telephone numbers

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# Notice of Appeals Hearing

- Typically contains PII and claim information.
- May not be disclosed before a hearing is held.



## Permissible Disclosure of Confidential UC Appeals Information AFTER a Hearing

- If permitted under state law and SSNs removed may disclose:
  - Appeals “records & decisions”
  - Precedential determinations on coverage of employers, employment
- Only final decisions, along with records of hearings that led to final decisions, may be disclosed
  - No appeal record until hearing held

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# DRUG TESTING

Limited authority to test UI applicants



# Drug Testing: Background

- Middle Class Tax Relief & Job Creation Act of 2012 added section 303(l), SSA, to permit states to test UC applicants for the unlawful use of a controlled substance as an eligibility condition if:
  1. Individual was terminated from employment with most recent employer because of unlawful use of a controlled substance; or
  2. Only available suitable work for individual is in an occupation that regularly conducts drug testing.

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# Drug Testing: Background

- Secretary of Labor required to issue regulations identifying the occupations that regulations.
- NPRM published in the Federal Register on October 9, 2014.
- All other interpretations of this provision will be addressed in guidance.
- UIPL 1-15 was issued on October 9, 2014.

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## Drug Testing: NPRM

- No pre-existing lists of occupations that regularly conduct drug testing.
- Federal and state drug testing laws identify positions or classes of positions for which testing is required.
- Employer testing policies vary: all employees, certain positions, or not at all.
- Goal to maximize state flexibility whenever possible.

# Drug Testing: NPRM

- Proposal: Occupations that regularly conduct drug testing are the positions/classes of positions:
  - For which testing is required under Federal or state law on date NPRM published; or
  - Are “targeted designated positions” identified by SAMHSA.
- Proposed key definitions:
  - Applicant: Individual filing an initial claim.
  - Controlled substance: Section 102 of Controlled Substance Act.
  - Suitable work: Same as for applicants for other purposes under state UC law.



**QUESTIONS?**