



# WAYS AND MEANS

CHAIRMAN KEVIN BRADY

## **CRA: UI Drug Testing Overreach**

In the final months, the Obama Administration issued a [final rule](#) severely limiting state discretion to drug test unemployment insurance (UI) applicants. This rule is a blatant act of executive overreach that also runs counter to Congressional intent and should be repealed using the Congressional Review Act.

[Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants](#)), issued August 1, 2016 (within the 60 day period under CRA).

Congress should use the CRA to repeal the final rule because the Department of Labor overstepped in defining the occupations eligible for drug screening and testing in the UI program, preventing the provision of law from being implemented as Congress intended.

### **The Law**

- In 2012, the bipartisan [Middle Class Tax Relief and Job Creation Act](#) made a number of reforms to the UI program, including overturning a 1960s-era DOL ban on the screening or testing of UI applicants for illegal drugs.
- The 2012 provision allowed (but did not require) states to test UI applicants who either (1) lost their job due to drug use, or (2) were seeking a new job that generally required new employees to pass a drug test.
- In order to implement the provision, the law required DOL, through regulation, to define any “occupation that regularly conducts drug testing.” It has taken DOL over 4 years to issue an overly prescriptive final regulation; all but ensuring states are unable to implement the provision.

### **The Background**

- The UI program promotes swift reemployment by requiring UI applicants to be [able to work, available to work, and actively seeking work](#) as a condition of eligibility.

- The 2012 provision suggested if a worker lost a job due to drug use, that worker would have established he or she as not being fully “able” to work. Also, if a worker is unable take a new job because he or she cannot pass a required drug test, that worker is not really “available” for work.
- In both cases, the intent was that states could restrict benefits for such individuals who fail drug tests, as well as design programs to help them overcome their drug use issues to become work ready.
- The policy builds on the work of 20 states that already limit UI benefits for individuals who refuse to take or fail an employer drug test or who have previous employment issues with drugs.
- And according to a [survey](#) by the Society for Human Resource Management, more than half of all employers drug test all their employees.
- Three states—Texas, Mississippi, and Wisconsin—have already enacted the necessary state law changes to implement this policy, but have been unable to move forward due to DOL’s delays and now the final rule.

### **The Current Situation**

- Since 2012, Chairman Brady and other members have met with DOL and OMB officials, [written letters to DOL](#), [held hearings](#), [formally commented on the proposed regulation](#), and held numerous meetings detailing concerns over their delays and draft regulations, which were preventing states from implementing the law as intended.
- Members felt that DOL’s proposed rule in 2014 fell significantly short of achieving the intended purpose and would all but ensure the law was not implemented as Congress intended.
- In August of 2016, over four years after the drug testing provision was signed into law, DOL issued its [final rule](#) – which, similar to the proposed rule two years earlier, severely limited the ability of states to implement this important policy, harming unemployed workers in their quest to find new employment.
- For example, while a truck driver would be required under law to be drug tested, under the DOL rule, that individual could also seek employment in a field that does not require drug testing and therefore could not be drug screened or tested under the UI program.
- DOL’s rule contradicts Congressional intent, which aimed to assure future employers that UI claimants reentering the workforce are truly “able and available” for work, so more of them can be hired.

