




CANADA  
PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 2012-811  
June 19, 2012

His Excellency the Governor General in Council,  
on the recommendation of the Minister of Human Resources  
and Skills Development, pursuant to section 109 of the  
*Employment Insurance Act*, approves the annexed *Regulations*  
*Amending the Employment Insurance Regulations*, made by  
the Canada Employment Insurance Commission.

<b>REGISTRATION - ENREGISTREMENT</b>	
NO. <u>90R/2012-128</u>	DATE <u>June 20, 2012</u>
	
REGISTRAR OF STATUTORY INSTRUMENTS CANADA REGISTRAIRE DES TEXTES REGLEMENTAIRES	

CERTIFIED TO BE A TRUE COPY—COPIE CERTIFIÉE CONFORME



CLERK OF THE PRIVY COUNCIL—LE GREFFIER DU CONSEIL PRIVÉ

REGULATIONS AMENDING THE EMPLOYMENT INSURANCE REGULATIONS

AMENDMENTS

**1. Subsection 77.93(2) of the *Employment Insurance Regulations*<sup>1</sup> is replaced by the following:**

(2) Pilot Project No. 16 applies in respect of every claimant whose benefit period is established in the period beginning on June 26, 2011 and ending on April 6, 2013 and who is ordinarily resident in a region described in Schedule I that is set out in Schedule II.91, other than a claimant in respect of whom Part VII.1 of the Act applies or in respect of whom the *Employment Insurance (Fishing) Regulations* apply.

**2. The Regulations are amended by adding the following after section 77.94:**

PILOT PROJECT TO ENCOURAGE CLAIMANT TO WORK MORE WHILE RECEIVING BENEFITS

**77.95** (1) Pilot Project No. 18 is established for the purpose of testing whether deducting from benefits payable to any claimant who has earnings during a week of unemployment 50% of those earnings, until the earnings exceed 90% of their weekly insurable earnings, would encourage claimants to work more while receiving benefits.

(2) Pilot Project No. 18 applies in respect of every claimant who makes a claim for benefits for any week in the period beginning on August 5, 2012 and ending on August 1, 2015 and who is ordinarily resident in a region described in Schedule I.

(3) For the purpose of Pilot Project No. 18, section 19 of the Act is adapted by adding the following after subsection (2):

(2.1) The amount to be deducted under subsection (2), except for the purpose of section 13, is equal to the total of

(a) 50% of the earnings that are less than or equal to 90% of the claimant's weekly insurable earnings used to establish their rate of weekly benefits, and

(b) 100% of any earnings that are greater than 90% of the claimant's weekly insurable earnings used to establish their rate of weekly benefits.

(4) For the purpose of Pilot Project No. 18, section 152.18 of the Act is adapted by adding the following after subsection (2):

(2.1) The amount to be deducted under subsection (2), except for the purpose of section 152.15, is equal to the total of

(a) 50% of the earnings that are less than or equal to 90% of the sum of the amounts referred to in paragraphs 152.16(1)(a) and (b) divided by 52, and

(b) 100% of any earnings that are greater than 90% of the sum of the amounts referred to in paragraphs 152.16(1)(a) and (b) divided by 52.

<sup>1</sup> SOR/96-332

---

(5) This section ceases to have effect on August 1, 2015.

**3. Schedule I to the Regulations is amended by replacing the section references after the heading "SCHEDULE I" with the following:**

*(Subsections 18(1), 77.2(2), 77.5(2), 77.7(2), 77.8(2), 77.9(2), 77.92(2), 77.93(2), 77.94(2) and 77.95(2))*

**COMING INTO FORCE**

**4. These Regulations come into force on the day on which they are registered.**

---

## REGULATORY IMPACT ANALYSIS STATEMENT

*(This statement is not part of the Regulations.)*

### *Executive summary*

#### **Issue:**

Best 14 Weeks: Pilot Project No. 16, *Pilot Project for Calculating Benefit Rate Based on Claimant's 14 Highest Weeks of Insurable Earnings* (Best 14 Weeks) is scheduled to end on June 23, 2012. The Economic Action Plan 2012 - *Jobs, Growth and Long-Term Prosperity* announced plans to implement, effective April 7, 2013, a new permanent national approach to calculating Employment Insurance (EI) benefit rates based on the availability of work in each region of the country (Variable Best Weeks). In the interim, the Government has announced that current EI rules in effect across the country will continue to apply.

Working While on Claim (WWC): Pilot Project No. 17, *Pilot Project Increasing Allowable Earnings from Employment While Claimant is Receiving Benefits* (WWC) is scheduled to end on August 4, 2012. Results to date suggest that, while the pilot was effective in encouraging claimants to work more while on claim, it did not encourage claimants to accept all available work as a result of the "clawback wall" inherent in this approach.

#### **Description:**

Best 14 Weeks: Amendments to the *Employment Insurance Regulations* (EI Regulations) extend the Best 14 Weeks pilot parameters, from June 24, 2012 to April 6, 2013, to test claimant's behavioural changes in anticipation of the new Variable Best Weeks and bridge the gap until the coming into force of the new benefit rate calculation approach.

WWC: Amendments to the EI Regulations introduce a new national WWC pilot for three years, from August 5, 2012 to August 1, 2015. Pilot Project No 18, *Pilot Project to Encourage Claimants to Work More While Receiving Benefits*, reduces a claimant's benefits by 50% of their earnings while on claim starting with the first dollar earned with the goal of ensuring claimants benefit from working more.

#### **Cost-benefit statement:**

Best 14 Weeks: It is estimated that approximately 277,000 claimants will benefit from the nine-month extension of the pilot to April 6, 2013, at an estimated program cost of \$225 million.

WWC: It is estimated that approximately 403,000 claimants will benefit from the new national WWC pilot project and 240,000 claimants could be negatively affected per year based on current work patterns. The total costs (program and administrative) are estimated to be \$149 million over four fiscal years.

**Business and consumer impacts**: As the extension of the Best 14 Weeks pilot project will continue in the same 25 EI economic regions using the same parameters, the impact on employers will be limited to new employers who may not have any experience with the Best 14 Weeks pilot. With the new, national WWC pilot, it is anticipated that claimants will accept more available work, resulting in increased earnings and greater attachment to labour market.

**Performance measurement and evaluation plan**: A Performance and Measurement Evaluation Plan has been developed and is available upon request.

### *Issue*

#### Best 14 Weeks

There are currently two methods in place to calculate a claimant's benefit rate. In non-pilot regions, under the *Employment Insurance Act* (EI Act), a claimant's benefit rate is calculated based on the number of weeks with insurable earnings (excluding small weeks, which are weeks with less than \$225 in earnings) within the rate calculation period (generally 26 weeks prior to claim), subject to a minimum number of weeks required and dependent on the unemployment rate in the claimant's EI region. In Best 14 Weeks pilot project regions, a

claimant's benefit rate is calculated based on their highest-earning 14 weeks within the qualifying period (generally 52 weeks prior to claim).

The Best 14 Weeks pilot project was first introduced in 2005 as Pilot project No. 7 (*Pilot Project for Calculating Benefit Rate Based on Claimant's 14 Highest Weeks of Earnings*), in 23 regions with high unemployment (10% or greater), and tested whether calculating the weekly benefit rate using a claimant's fourteen highest weeks of insurable earnings encouraged claimants to accept all available work prior to claiming EI. In October 2008, Pilot Project No.7 was re-introduced as Pilot Project No. 11, with the same provisions in 25 regions with an unemployment rate of 8% or more, again to test whether claimants were encouraged to accept all available work prior to claiming EI. It was extended in October 2010, up to June 25, 2011. Budget 2011 re-introduced it as Pilot Project No. 16 until June 23, 2012.

Assessments of the impacts of the Best 14 Weeks pilot project, including impacts on work effort, are currently underway. However, preliminary analyses from December 2005 to April 2009 indicate that about 62% of all claimants in pilot regions received higher benefits as a result of the Best 14 Weeks pilot project. Administrative data and evaluation studies point to similar results. The average weekly benefit of affected claimants would have been about \$284 without the Best 14 Weeks pilot project instead of \$325. This suggests that claimants who benefited from the Best 14 Weeks pilot had a weekly benefit rate that was on average \$41 higher than it would have been prior to the pilot project.

The Best 14 Weeks pilot project is scheduled to conclude on June 23, 2012. While the Best 14 Weeks pilot project fostered claimants to accept weeks of work that would otherwise decrease their benefit rate, the economic and labour market conditions of EI economic regions evolved over time with a number of pilot regions consistently recording unemployment rates below 8%, while many excluded non-pilot regions were experiencing high unemployment rates (i.e. above 8%). Moreover, the pilot project was found to be less effective at targeting seasonal workers than expected (relatively more first-time claimants benefited from it than seasonal workers). The Government announced, in Budget 2012, the introduction of a new method to calculate weekly EI benefits based on a new legislated national Variable Best Weeks approach, building on lessons learned from the Best 14 Weeks pilot project.

#### WWC

Under the EI Act, a claimant can earn up to 25% of their benefit rate (or \$50, whichever is greater) per week without incurring any deductions from the EI benefits payable in that week. Any additional earnings above the threshold are deducted dollar-for-dollar from benefits payable in that week (i.e. a 100% "clawback rate"). This provision was designed to encourage workforce attachment. However, some employers expressed concern that EI claimants may, in some cases, decline available work because they would be penalized by a reduction in EI benefits for each additional dollar earned.

In 2005, Pilot Project No. 8, *Pilot Project Increasing Allowable Earnings from Employment While Claimant is Receiving Benefits* was introduced to test whether increasing the amount of a claimant's allowable earnings from employment while on claim would encourage claimants to accept additional employment while receiving benefits. The three-year pilot project increased the allowable earnings threshold from the legislated threshold of \$50 or 25% of the benefit rate to \$75 or 40% of the benefit rate, before applying deductions from the weekly benefits payable. This pilot project operated in 23 regions of high unemployment (10% or greater) and was available to claimants receiving regular, fishing, parental, and compassionate care benefits.

Pilot Project No. 12, *Pilot Project Increasing Allowable Earnings from Employment While Claimant is Receiving Benefits (2)*, was introduced for a two-year period with the same parameters as Pilot Project No. 8, but it was made available nationally, in order to gather additional evidence on the impact on incentives to work by generating data on labour market effects in regions experiencing varying economic circumstances. In October 2010, the pilot project was extended by eight months to allow for further testing through a period of economic recovery until August 6, 2011. Budget 2011 re-introduced it as pilot No. 17 until August 4, 2012.

The WWC pilot project is scheduled to conclude on August 4, 2012. Results to date indicate that when the WWC allowable earnings threshold is increased, claimants adjust their behaviour to work just up to the new threshold (i.e. from half of a day to one day a week). These results are not surprising as the full exemption from the clawback on the first day of earnings creates an incentive to work, while the 100% clawback for work beyond a day means there is no net financial benefit from working more than one day as earnings are offset by EI benefit rate deductions.

Overall, analysis of the WWC pilot project approach suggests that while the pilot was effective in encouraging claimants to work more while on claim, it did not encourage claimants to accept all available work as a result of the "clawback wall" inherent in this approach. The Government announced in Budget 2012 a new national WWC pilot project that will cut the current clawback rate in half and apply it to all earnings made while on claim until claimants earn 90% of the earnings used to establish their benefit rates.

### ***Objectives***

- To extend the Best 14 Weeks pilot project (i.e. Pilot project No. 16, *Pilot Project for Calculating Benefit Rate Based on Claimant's 14 Highest Weeks of Insurable Earnings*) for nine months to collect data on claimants' behavioural changes in anticipation of the new Variable Best Weeks approach.
- To introduce a new WWC pilot, Pilot Project No 18, *Pilot Project to Encourage Claimants to Work More While Receiving Benefits*, to test a new approach to create incentives to accept more available work while claiming EI.

### ***Description***

#### Best 14 Weeks

The amendments to the EI Regulations extend the current Best 14 Weeks pilot project parameters until April 6, 2013 in the same 25 EI economic regions to test claimants' behavioural changes in anticipation of the new Variable Best Weeks and to bridge the gap until the coming into force, on April 7, 2013, of the new benefit rate calculation approach.

#### WWC

The amendments to the EI Regulations introduce a new WWC pilot that will reduce a claimant's benefits by 50% of their earnings while on claim starting with the first dollar earned. This ensures claimants will benefit from accepting more available work.

Specifically, for each dollar that a claimant earns while in receipt of EI benefits, the claimant's weekly benefit payments will be reduced by 50 cents, up to the point where a claimant's earnings reach 90% of the earnings used to establish their benefit rate, at which point the claimant's benefits will be reduced dollar for dollar, until benefits are reduced to zero. This ensures that claimants will never have a higher combined income (EI benefits and earnings from work) than the earnings used to establish their benefit rate. There will be no change to the treatment of earnings during the waiting period.

The new WWC pilot project will apply to claimants receiving regular, fishing, compassionate care and parental benefits, as well as self-employed persons claiming compassionate care and/or parental benefits.

The new pilot project will be implemented nationally for three years, from August 5, 2012 to August 1, 2015.

### ***Regulatory and non-regulatory options considered***

#### Best 14 Weeks

Based on the Budget 2012 announcement that a new legislated approach to calculate weekly EI benefits (Variable Best Weeks) would come into effect in April 2013, there were two viable options: extend the Best 14 Weeks pilot project as a bridge to the implementation of Variable Best Weeks, or revert to the current legislative provisions of the EI Act.

Not extending the Best 14 Weeks pilot project and reverting to legislation before the implementation of Variable Best Weeks approach would subject claimants to three different rate calculation methods over a 12 month period (i.e. Pilot No 16, legislated provisions, and Variable Best Weeks). Moreover, it would prevent the Canada Employment Insurance Commission (CEIC) from testing the behavioural response in work effort among two key groups: claimants in the Best 14 Weeks pilot (25 regions) currently applying a "best weeks" approach and claimants who are not familiar or experienced with a "best weeks" approach in non-Best 14 Weeks regions.

#### WWC

The non-regulatory alternatives considered were to introduce the current WWC pilot project parameters (the greater of \$75 or 40% of weekly benefits) or the new WWC method (50% earnings allowance) into legislation.

Since results from the current pilot project showed that a claimant's behaviour is influenced by the "clawback wall," it was decided that the current approach could be improved. Therefore, the current WWC pilot project was not made permanent.

It was also decided that making the 50% earning allowance permanent would be premature as testing is required to determine the effectiveness of the new WWC approach and evaluate the impacts on work effort before moving forward on a permanent basis.

### ***Benefits and costs***

The extension of the Best 14 Weeks pilot will allow the CEIC to test whether EI claimants adjust their behaviour to accept more work in anticipation of the potential increase in the number of weeks used to calculate their benefit rate (Variable Best Weeks).

Based on static estimates (i.e. not accounting for potential behavioural adjustments), the nine-month extension of the Best 14 Weeks pilot project is expected to benefit approximately 277,000 claimants at an estimated cost of \$225 million. There are no additional administrative costs associated with the extension of this pilot project.

The introduction of the new WWC pilot project will enable the CEIC to test whether basing the working while on claim allowance on 50% of earnings, starting with the first dollar earned, will further encourage claimants, including self-employed claimants, to work more while on claim by rewarding claimants for additional work and by eliminating the allowable earnings threshold (i.e. "clawback wall") applied in Pilot Project No 17.

Based on current work patterns, the introduction of the new three-year WWC pilot is expected to benefit approximately 403,000 claimants and will negatively affect 240,000 claimants per year. The four year fiscal cost is estimated to be \$149 million (\$136 million for program costs and \$13 million for administrative costs). However, these estimates are static and do not reflect anticipated behavioural changes of claimants working more once the "clawback wall" is eliminated.

Based on static estimates, preliminary analysis shows that women and men have similar likelihood of benefiting from the pilot projects. Gender impacts, taking into consideration work patterns and earnings history, will be evaluated.

During the testing period, EI claimants may increase their work effort prior to, and during, their claim for EI benefits, which would result in increased earnings for claimants and increased flexibility for employers. However, claimants that currently work a few hours a week while on claim, below the current allowable threshold, may decide to not work these potential hours as they would be subject to the 50% earnings exemption from the first dollar earned.

### ***Rationale***

#### Best 14 Weeks

Extension of the current Best 14 Weeks pilot project will support future assessments and evaluations of the impact of the planned introduction of the Variable Best Weeks approach. By providing claimants in current Best 14 Weeks pilot regions with a 12-month notice from announcement of the change, the extension will test if claimants in Best 14 Weeks pilot regions adjust their behaviour to work additional weeks in anticipation of the potential increase in the number of weeks used for the benefit rate calculation. Based on the CEIC assessment of the behavioural response of claimants during the pilot extension, combined with an examination of the impacts of legislated changes after April 6, 2013, the CEIC will be in a better position to determine whether additional adjustments would be required to further strengthen incentives to work.

#### WWC

The EI program strives to find a balance between providing adequate income benefits and encouraging workforce attachment. Removing barriers to full labour market participation is particularly important at a time when skill shortages are beginning to emerge due to the aging population. The CEIC has been testing an approach to encouraging work and providing income support through the WWC pilot project which is scheduled to sunset in August 2012.

The pilot project was designed to encourage workforce attachment. However, some employers reported concerns that EI claimants may, in some cases, decline available work because they would be penalized by a reduction in EI benefits for each additional dollar earned.

The new pilot project will test whether eliminating the "clawback wall", by introducing a new treatment to allowable earnings of 50% from the first dollar earned, would encourage claimants to work more, since work would pay at a consistent rate across full income range.

In 2011, special benefits were made available to self-employed Canadians on a voluntary basis. Including self-employed claimants in the new WWC pilot project will align with the principle-based approach that was adopted in designing key program parameters for the provision of EI special benefits to self-employed, i.e. the provision of benefits which mirror the existing parameters for paid employees, to the extent possible.

### ***Consultation***

Stakeholder reaction to the Budget 2012 announcement of the new WWC pilot project and the extension of the Best 14 Weeks pilot project has been positive. Based on reactions to the Budget 2012, there was general support for a national approach that is fair across the country.

Organized labour groups who have called for the current pilots to be extended or made permanent, generally support the Variable Best Weeks approach and the temporary extension of the Best 14 Weeks pilot project, as the new approach would allow claimants to work weeks with lower earnings without reducing future EI benefits. However, labour groups have expressed concerns over the impact of the new proposed WWC pilot project on low-income earners and claimants working part-time below the current allowable earnings threshold.

Prior to Budget 2012, reactions to EI pilot projects have generally been positive, and stakeholder groups representing organized labour have called for the pilot projects to be extended or made permanent. Stakeholder groups representing employers have expressed concern about the cost of the measures and the impact on EI premium rates, with some employers expressing support for pilot projects which increase the availability of workers.

### ***Implementation, enforcement and service standards***

Existing implementation and enforcement mechanisms contained in Human Resources and Skills Development Canada's adjudication and controls procedures will ensure that these regulatory amendments are implemented effectively and efficiently. The Department's continuing objective is to reach a decision on 80% of all EI claims within 28 days (four weeks) of receipt of all pertinent information.

### ***Performance measurement and evaluation***

A Performance and Measurement Evaluation Plan has been developed and is available upon request. A summative evaluation of the two pilot projects will be completed. The Best 14 Weeks and WWC pilot projects will be assessed on whether the pilot projects being tested have the anticipated behavioural response on work efforts.

The CEIC will continue to monitor the effectiveness of the EI program through the annual *Employment Insurance Monitoring and Assessment Report* which is tabled in Parliament. Findings on the two pilot projects will be presented in the report when available.

### ***Contact***

Irwin Bess  
Senior Director  
Employment Insurance Policy Directorate  
Skills and Employment Branch  
Human Resources and Skills Development Canada  
140 Promenade du Portage, 5th Floor  
Gatineau, Quebec  
K1A 0J9



Telephone: 819-994-4690  
Fax: 819-934-6631