

# Informational Report – Executive Order 2023-003

## Executive Order 2023-03 – Template

Name of department, agency, board, or commission: Department of Employment, Training, and Rehabilitation (DETR)

Address: 500 E. Third St.

City: Carson City

Zip: 89713

Telephone: 775-684-3891

Name of Director: Christopher Sewell

Director Email: [ccsewell@detr.nv.gov](mailto:ccsewell@detr.nv.gov)

### **Section 1 - Comprehensive Review of Regulations / Section 3 – Mandatory Meeting and Report**

The above-named department, agency, board, or commission conducted a comprehensive review of the regulations subject to its enforcement that can be streamlined, clarified, reduced, or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth. The regulations identified for Section 1 of Executive Order 2023-03 are listed below with the information as required on page 1 of the instruction sheet on the following pages of the report:

<b>Regulation/ Information as required on page 1</b>	<b>Page number</b>
1. NAC 612.270 (Request for Exemption)	1
2. NAC 612.660 (Amendment/Clarify)	1-2
3. NAC 612.470 (Amendment/Clarify)	2
4. NAC 612.290 (Amendment/Clarify)	2-3
5. NAC 612.120 (Amendment/Clarify)	3-4
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
21.	
22.	
23.	
24.	
25.	
26.	
27.	
29.	
29.	
30.	

**Section 2 – Regulation for Removal / Section 3 – Mandatory Meeting and Report**

The above-named department, agency, board or commission conducted a comprehensive review of the regulations subject to its enforcement and identified the following ten (10) or more regulations recommended for removal. The regulations identified for Section 2 of Executive Order 2023-03, ranked in descending order of priority, are listed below with the information as required on page 1 of the instruction sheet on the following pages of the report:

<b>Regulation/Information as required on page 1</b>	<b>Page number</b>
1. NAC 612.665 – 612.685 et sec (11 regulations)	4-7
2. NAC 612.590-NAC 612.625 (15 regulations)	7-11
3. NAC 612.056	12
4. NAC 394.700 – 394.730 (6 regulations)	12-13
5.NAC 394.600	13
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
21.	
22.	
23.	
24.	
25.	
26.	
27.	
28.	
29.	
30.	
31.	
32.	
33.	
34.	
35.	
36.	
37.	
38.	
39.	

40.	
-----	--

## **DETR Response to Executive Order 2023-003**

**Comprehensive Review:** The Department of Employment Training and Rehabilitation conducted a comprehensive review of all regulations from its various divisions including the Employment Security Division, the Research and Analysis Division, Vocational Rehabilitation, Committee on Postsecondary Education, Governor’s Office of Workforce Innovation, and Nevada Equal Rights Commission.

**Public Hearings:** Public hearings were conducted on April 18, April 28, and May 1, 2023 by the various divisions in DETR. No one from the public attended any of the meetings or commented on regulations.

### **REQUESTS FOR EXEMPTIONS**

**Request for Exemption:** NAC 612.270 must be found exempt from Executive Order 2023-003 under section 5 of Executive Order. This regulation is the yearly unemployment tax rate. If the rate is not put into a regulation every year, then the average unemployment tax rate reverts to the “new business rate” of 2.95%. The net effect of a failure to renew this regulation every year would then result in Nevada businesses whose tax rate is below 2.95% having their taxes increased at no fault of their own. In contrast, businesses who have been “bad actors” and laid off numerous people resulting in a tax rate of over 2.95% would have their taxes reduced to 2.95% despite a history of layoffs to Nevada Workers that would result in a higher tax rate if calculated under current standards. It is imperative that the current regulation be renewed at the end of each year to avoid catastrophic tax consequences to certain businesses.

### **CLARIFICATION OR AMENDMENTS**

#### **Recommendation for Clarification/Amendment #1:**

The Employment Security Division recommends amending NRS 612.660, to conform with current statutes. During the 2021 legislative session, SB 75 was passed, which allowed for the electronic transmission of all notices for the unemployment insurance program, which were done both to increase speed, but also to save costs of the mailing and postage. This saving is already taking place and is reflected in the current budget cycle that is closed. This regulation might confuse businesses looking at the statute as far as the deadline given the NRS now allows for electronic transmission of all documents. Therefore, adding the clarification makes the regulation more clear.

#### **NAC 612.660 Petition for modification of assessment: Procedure for hearings. ([NRS 612.220](#), [612.670](#))**

1. An employer who petitions for the modification of an assessment may present any proof, either oral or documentary, which he or she desires if the proof is pertinent to the issues. The Division may offer its notice of levy of assessment which is prima facie proof of the mailing of a notice, the amount of wages paid by the employer, default in payment, the amount of contribution payable and all forfeit and interest which may have accrued for the period covered by the assessment, and may offer any other proof pertinent to the issues.

2. Technical rules of evidence do not apply to any hearing or petition for the modification of an assessment. The Division has the right to cross-examine witnesses called by the petitioner. The petitioner has the right to cross-examine witnesses called by the Division.

3. The Division, at the conclusion of the evidence, may present argument in support of the claim, and the petitioner may thereafter present argument in support of the petition. The Division has the right to argue in rebuttal. No further argument is allowed.

4. The Division will supply, upon application, to any employer requesting a hearing, subpoenas under seal of the Division requiring the attendance of witnesses. Written stipulations as to the facts, signed by the employer or his or her representative and the representative of the Division, may be accepted and considered conclusive as to those facts

by the Administrator. Fees and mileage for witnesses must be paid solely at the expense of the party calling the witness. If the employer so requests, the hearing must be reported and the cost of reporting borne by the employer.

5. When a hearing is requested, the matter must be heard and determined at the central office of the Division at Carson City, Nevada, unless, for the convenience of witnesses and others involved, the Administrator directs that the hearing be held at some other place.

6. The Administrator will render a decision in writing within 30 days after the conclusion of a hearing or within 30 days after the submission of the matter to him or her if a hearing is not requested. Notice of the decision and a copy of the decision must be mailed *or electronically transmitted* to the employer at his or her last known address and to the sureties or bondsmen.

7. The amount determined to be due in accordance with the decision is payable to the Division within 20 days after the mailing *or electronic transmission* of the notice of the decision.

#### **Recommendation for Clarification/Amendment #2:**

The Employment Security Division recommends amending NRS 612.470, to conform with current statutes. During the 2021 legislative session, SB 75 was passed, which allowed for the electronic transmission of all notices for the unemployment insurance program, which were done both to increase speed, but also to save costs of the mailing and postage. This saving is already taking place and is reflected in the current budget cycle that is closed. This regulation might confuse businesses looking at the statute as far as the deadline given the NRS now allows for electronic transmission of all documents. Therefore, adding the clarification makes the regulation more clear.

#### **NAC 612.470 Effective period; notices and reports. ([NRS 612.220](#), [612.295](#), [612.750](#))**

1. An election approved under [NAC 612.440](#) to [612.470](#), inclusive, becomes effective at the beginning of the calendar quarter in which the election was submitted, unless the election as approved specifies the beginning of a different calendar quarter.

2. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, the earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

3. If the agency of the elected jurisdiction finds that the nature of the services customarily performed by the person for the electing unit have changed so that they are no longer customarily performed in more than one participating jurisdiction, the election may be terminated. This termination is effective as of the close of the calendar quarter in which notice of the finding is mailed *or electronically transmitted* to all parties affected.

4. Except as provided in subsection 3, each election approved remains in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

5. If an election ceases to apply to any person under subsection 3 or 4, the electing unit shall notify the person affected accordingly.

6. The electing unit shall promptly notify each person affected by its approved election and furnish the elected agency a copy of the notice.

7. If a person covered by an election is separated from his or her employment, the electing unit shall again notify the person as to the jurisdiction under whose law his or her services have been covered. If, at the time of termination, the person is not located in the elected jurisdiction, the electing unit shall notify the person as to the procedure for filing claims for interstate benefits.

8. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, for example, if a person's services for the employer cease to be customarily performed in more than one participating jurisdiction or if a change in the work assigned to a person requires him or her to perform services in a new participating jurisdiction.

[Employment Security Dep't, No. 9 § 4, eff. 4-1-45]

#### **Recommendation for Clarification/Amendment #3:**

The Employment Security Division recommends amending NRS 612.290, to conform with current statutes. During the 2021 legislative session, SB 75 was passed, which allowed for the electronic transmission of all notices for the unemployment insurance program, which were done both to increase speed, but also to save costs of the mailing and postage. This saving is already taking place and is reflected in the current budget cycle that is closed. This

regulation might confuse businesses looking at the statute as far as the deadline given the NRS now allows for electronic transmission of all documents. Therefore, adding the clarification makes the regulation more clear.

**NAC 612.290 Transfers of experience record: Effects of and restriction on completion; protest and appeal of determination of Division. (NRS 612.220, 612.250, 612.550, 612.732)**

1. When a total transfer of an experience record has been completed:

(a) Payrolls, contributions paid and benefit charges must be transferred to and be a part of the experience record of the successor. Benefits paid, based on the payrolls of the predecessor, must then be charged to the experience record of the successor. If a claimant for unemployment benefits has been paid wages for the base period by the predecessor employer, the wages shall be deemed to have been paid by the successor employer.

(b) The predecessor, as a transferring employer, may not retain the rate previously determined for him or her but will be classed as a new employer with respect to any employment after the date of the completed transfer.

2. The contribution rate for a successor who qualifies for the transfer of an experience record for the period beginning with the date of the transfer and ending with the next effective date of contribution rates is:

(a) The contribution rate applicable to the transferring employer with respect to the period immediately preceding the date of the transfer if:

(1) The acquiring employer was not, before the transfer, a subject employer; and

(2) Only one transferring employer, or only transferring employers having identical rates, are involved;

(b) A new rate, computed on the experience of the transferring employer or, in the case of a partial transfer, the experience attributable to the part of the business transferred, combined with the experience of the acquiring employer as of the regular computation date for the rate period in which the transfer occurs; or

(c) The rate of contribution for a newly subject employer. A computation for a contribution rate must be made in all transfers involving a severable and distinct portion of an organization, trade or business.

3. No transfer of an experience record and rate will be completed if the Administrator determines that an acquisition or change of all or part of a business organization was effected solely or primarily to obtain a more favorable contribution rate. In determining whether an acquisition was primarily for the purpose of obtaining a lower rate of contributions, the Administrator will use objective factors which may include, without limitation:

(a) The cost of acquiring the business;

(b) Whether the acquiring person continued the business enterprise of the acquired business;

(c) How long the business enterprise was continued; and

(d) Whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted before the acquisition.

4. A protest to the determination of the Division with respect to transfers must be filed not later than 15 days after the date the notice of the determination is mailed *or electronically transmitted*. An appeal may be filed within 11 days after the date a determination, based on the protest, is mailed *or electronically transmitted* by the Division.

**Recommendation for Clarification/Amendment #4:**

The Employment Security Division recommends amending NRS 612.120, to conform with current statutes. During the 2021 legislative session, SB 75 was passed, which allowed for the electronic transmission of all notices for the unemployment insurance program, which were done both to increase speed, but also to save costs of the mailing and postage. This is saving is already taking place and is reflected in the current budget cycle that is closed. This regulation might confuse businesses looking at the statute as far as the deadline given the NRS now allows for electronic transmission of all documents. Therefore, adding the clarification makes the regulation more clear.

**NAC 612.120 Employing units: Notification of claims, determinations and rulings; reports of relevant facts; protest of payment of benefits; relief from charging of benefits. (NRS 612.220, 612.475, 612.551)**

1. The last or next to last employing unit that receives a notice of the first claim filed by a claimant following separation from employment must, within 11 days after the date of the notice, submit to the Division all relevant facts that affect the claimant's rights to benefits, including all relevant facts which disclose that the claimant separated from employment voluntarily and without good cause, or was discharged for misconduct in connection with his or her employment.

2. The last or next to last employing unit may protest the payment of benefits if the protest is filed within 11 days after the date of the notice of filing the claim. If the employing unit has filed a report of all relevant facts in a timely manner that might adversely affect the claimant's rights to benefits, the report is considered as a protest to the payment of benefits.

3. The last or next to last employing unit that has filed a response in a timely manner will be notified in writing of the determination as to the claimant's rights to benefits. If the last or next to last employing unit has contributed 75 percent of the claimant's base period earnings and has submitted all relevant facts in a timely manner indicating that the claimant quit voluntarily without good cause, or was discharged for misconduct in connection with his or her employment, the employer will be notified in writing of the Division's ruling as to the cause of termination of the claimant's employment and whether the experience rating record of the employer is chargeable with benefits paid the claimant.

4. The last or next to last employing unit is entitled to relief from the charging of benefits to its experience rating record if the claimant is found to have quit employment with the employing unit solely to accept other employment.

5. Any employing unit that paid wages to the claimant in the base period of the claim will be notified of the first claim filed which results in a determination that the claimant is an insured worker. The base period employer so notified must, within 11 days, submit all relevant facts disclosing whether the claimant was discharged for a crime committed in connection with his or her employment. The Division will issue a decision setting forth whether the wages will be denied in the determination of the payment of benefits.

6. Any notice of determination or ruling will contain a statement setting forth the right of appeal.

7. The notice of first claim filed which is mailed *or electronically transmitted* to the last or next to last employing unit must be addressed to:

- (a) The employing unit's place of business where the claimant was most recently employed;
- (b) The business office of the employing unit where the records of the claimant's employment are maintained; or
- (c) The business office of an authorized agent of the employing unit if the employing unit has filed with the Administrator an approved authorization designating the agent to represent the employing unit.

8. Any notice properly addressed to the last known address of the employing unit or its authorized agent constitutes proper notification to the employing unit of the first claim filed.

9. The notice of first claim filed which is mailed *or electronically transmitted* to a base period employer who is not the last or next to last employer of the claimant must be addressed to:

- (a) The employing unit's place of business where the claimant was most recently employed;
- (b) The business office of the employing unit where the records of the claimant's employment are maintained;
- (c) The address or addresses as requested by the employer and agreed to by the Administrator; or
- (d) The business office of an authorized agent of the employing unit if the employing unit has filed with the Administrator an approved authorization designating the agent to represent the employing unit.

È Any notice properly addressed to the last known address of the employer or his or her authorized agent constitutes proper notice to the base period employer.

10. As used in this section, "all relevant facts" includes, without limitation, dates of employment, type of work performed, specific reason given for separation from employment, the final incident to cause the separation from employment and prior disciplinary warnings of a similar nature given, if any.

[Employment Security Department, No. 45 §§ I & II, eff. 12-16-70] — (NAC A 6-3-85; A by Employment Security Division, 7-5-94; R199-05 & R201-05, 2-23-2006)

## **RECOMMENDATIONS FOR REMOVAL**

### **Recommendation for Removal #1:**

The Employment Security Division recommends the removal of the following eleven regulations related to business start up program for Seniors and Veterans (NAC 612.665 – 612.685). These regulations were meant to start a program with federal loans for business started by veterans or seniors. ESD recommends removal of these regulations as the project has been an abject failure. Because of the federal obligations attached to the money being loaned and the restrictions placed by the federal government on the lending itself, no lender in the history of the program has ever agreed to lend the money to anyone in the program. Indeed, no lender will participate period.

**NAC 612.665 Definitions.** ([NRS 612.607](#)) As used in [NAC 612.665](#) to [612.685](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 612.667](#), [612.669](#) and [612.671](#) have the meanings ascribed to them in those sections.

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010)

**NAC 612.667 "Program" defined.** ([NRS 612.607](#)) "Program" means the program established pursuant to [NAC 612.673](#).

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010)

**NAC 612.669 "Start-up business" defined.** ([NRS 612.607](#)) "Start-up business" means a small business that has been in operation for 6 months or less.

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010)

**NAC 612.671 "Veteran" defined.** ([NRS 612.607](#)) "Veteran" has the meaning ascribed to it in 38 U.S.C. § 101(2).

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010)

**NAC 612.673 Establishment of program.** ([NRS 612.607](#)) The Administrator shall establish a program to disburse grants of money to nonprofit private entities organized under the provisions of [chapter 81](#) or [82](#) of NRS to be used exclusively to assist start-up businesses which are at least majority owned and controlled by one or more veterans or one or more senior citizens.

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010)

**NAC 612.675 Qualifications required to receive grants.** ([NRS 612.607](#)) The Administrator shall ensure that all loans made under the program are disbursed by qualified nonprofit private entities. Qualifications must be identified using information submitted by the nonprofit private entity pursuant to [NAC 612.677](#). In determining whether a nonprofit private entity is qualified to receive a grant under the program, the Administrator may consider, without limitation:

1. The experience and past performance of the nonprofit private entity in delivering training and counseling in the areas of financial services;
2. The experience and past performance of the nonprofit private entity in the management of public funds or loans;
3. The ability of the nonprofit private entity to provide services on a statewide or regional basis;
4. Evidence of an established lending process, including, without limitation, underwriting guidelines and collection policies and procedures for delinquent accounts;
5. The length of time the nonprofit private entity has been providing financial services to the public or private sector; and
6. The aging of the current loan portfolio of the nonprofit private entity.

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010)

**NAC 612.677 Application for grants; compliance with terms of grant.** ([NRS 612.607](#))

1. A nonprofit private entity that applies for a grant pursuant to the program must do so in the manner prescribed by the Administrator. The Administrator:

(a) Shall, at a minimum, require the submission of the financial statements of the nonprofit private entity for the 3 years immediately preceding the date of the application; and

(b) May require the nonprofit private entity to demonstrate, to the satisfaction of the Administrator, fiduciary responsibility, principles of accounting practices and fiscal mechanisms consistent with safeguarding public funds and the public interest.

2. Any grant which is awarded to a nonprofit private entity is subject to audit and review by the Division.

3. The Administrator may require a nonprofit private entity to repay any grant money that has not been expended in compliance with the terms under which the grant was awarded.

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010; A by R084-14, 10-24-2014)

**NAC 612.679 Conditions for approval of loans.** ([NRS 612.607](#))



1. A nonprofit private entity which administers the disbursement of money received as a grant pursuant to the program may approve an individual loan of up to \$15,000 to a start-up business without the approval of the Administrator. The Administrator may waive the loan limit prescribed in this subsection for a loan not exceeding \$20,000.

2. A loan may not be made to:

(a) An applicant for a loan by the person responsible for approving the loan on behalf of the nonprofit private entity if the person approving the loan has a dating relationship with the applicant or:

(1) Is the spouse or domestic partner of the applicant;

(2) Is a member of the household of the applicant;

(3) Is related to the applicant, or to the spouse or domestic partner of the applicant, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity;

(4) Employs the applicant, the spouse or domestic partner of the applicant or a member of the household of the applicant;

(5) Has a substantial and continuing business relationship with the applicant; or

(6) Has any other commitment, interest or relationship with the applicant that is substantially similar to a commitment, interest or relationship described in subparagraphs (1) to (5), inclusive; or

(b) A start-up business which has not complied with the provisions of [chapter 76](#) of NRS or which fails to demonstrate compliance with applicable requirements governing contributions or industrial insurance pursuant to the provisions of [chapter 612](#) or [616C](#) of NRS.

3. An applicant for a loan pursuant to this section must submit to the nonprofit private entity a business plan which clearly identifies and explains the intended use of the loan in the manner prescribed by the nonprofit private entity.

4. An applicant for a loan may not have more than one loan which is obtained pursuant to this section and which is in repayment, except that a borrower who has repaid such a loan pursuant to [NAC 612.683](#) may apply for another loan for the purposes of expanding the business if the business still qualifies as a start-up business.

5. Any legally organized business entity which receives a loan from a nonprofit private entity pursuant to this section:

(a) May use the money for business-related costs, including, without limitation, costs associated with the start-up of the business and licensing and permitting; and

(b) May not, in any manner, use any portion of the money for expenses commonly considered personal in nature.

6. As used in this section:

(a) "Dating relationship" has the meaning ascribed to it in [NAC 284.0533](#).

(b) "Domestic partner" has the meaning ascribed to it in [NRS 281A.085](#).

(c) "Domestic partnership" has the meaning ascribed to it in [NRS 281A.086](#).

(d) "Household" has the meaning ascribed to it in [NRS 281A.100](#).

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010; A by R084-14, 10-24-2014)

**NAC 612.681 Appeal for denial of application for loan. ([NRS 612.607](#))**

1. A nonprofit private entity which administers a loan shall establish a process by which an applicant may appeal the denial of an application for a loan under the program. The appeal process must provide for the creation of a panel or committee that is responsible for holding regular meetings in a manner sufficient to ensure the timely resolution of any appeal filed with the nonprofit private entity.

2. Any records relating to an appeal described in subsection 1 must be made available to the Division for inspection.

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010)

**NAC 612.683 Repayment of loan; use of interest to issue additional loans under certain circumstances; forgiveness of outstanding balance under certain circumstances. ([NRS 612.607](#))**

1. Except as otherwise provided in subsection 4, both principal and interest on a loan made under the program must be repaid to the nonprofit private entity not later than 4 years after the date on which the loan is made. The nonprofit private entity administering the loan must establish a payment schedule and agreement with the borrower. The schedule and agreement must provide that:

(a) The first year of repayment of a loan is free from interest.

(b) From the beginning of the second year of repayment of a loan, a loan which is not repaid in full by the end of the first year is subject to a maximum rate of interest not higher than the maximum rate of interest set forth in this paragraph on the outstanding balance of the loan until the loan is paid in full. For the purposes of this paragraph, the maximum rate of interest is a rate of interest equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the beginning of the second year of repayment of the loan, plus 2.25 percent simple interest per annum, with the amount of this maximum rate of interest adjusted accordingly on each January 1 and July 1 thereafter until the loan is paid in full.

(c) The failure of the borrower to repay the principal and interest on the loan may result in collection proceedings to the extent allowable under the applicable laws and regulations of this State.

2. Except as otherwise provided in subsection 3, any interest earned by the nonprofit private entity pursuant to subsection 1:

(a) Must be deposited in a separate account established and maintained by the nonprofit private entity for the purpose of administering loans; and

(b) Must not be commingled with any other money.

3. If the Administrator determines that a nonprofit private entity has earned and collected interest in excess of the amount of money which is necessary for the purpose of administering loans, the Administrator may require that the amount of the excess be used to issue additional loans.

4. The Administrator may forgive the outstanding balance of a loan if:

(a) The Administrator determines that the loan was not secured either in whole or in part by fraud or misrepresentation of the borrower;

(b) The borrower demonstrates an inability to repay the loan; and

(c) The recovery of the loan would be against equity and good conscience, as determined by the Administrator.

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010; A by R084-14, 10-24-2014)

**NAC 612.685 Reimbursement of administrative costs. (NRS 612.607)**

1. If the amount of interest collected by a nonprofit private entity is insufficient for the purpose of administering loans pursuant to subsection 2 of [NAC 612.683](#), the nonprofit private entity may be entitled to reimbursement for administrative costs incurred as a result of administering a loan under the program, but any such reimbursement must not exceed 10 percent of the total amount of all grants awarded to the nonprofit private entity for the purposes of making loans under the program.

2. A claim for reimbursement pursuant to subsection 1 must be made:

(a) In accordance with generally accepted accounting principles; and

(b) On a form prescribed by the Administrator.

(Added to NAC by Employ'm't Security Div. by R128-09, eff. 4-20-2010; A by R084-14, 10-24-2014)

**Recommendation for Removal #2:**

The Employment Security Division along with the Research and Analysis Division recommends the removal of the following fifteen regulations related to the unemployment compensation bond fund (NAC 612.590-. These regulations a relic of the great recession and dealt with bonding to replenish the trust fund. The trust fund is now solvent and in the event we have another event, chief economist David Schmidt believes that this method would be more harmful than helpful in future endeavors based on the past experience of both the great recession and the pandemic.

**NAC 612.590 Definitions. (NRS 612.220, 612.6132)** As used in [NAC 612.590](#) to [612.625](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 612.593](#) to [612.605](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Employ'm't Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.593 "Baseline bond interest and expenses contribution rate" defined. (NRS 612.220, 612.6132)** "Baseline bond interest and expenses contribution rate" means the rate established pursuant to [NAC 612.615](#).

(Added to NAC by Employ'm't Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.595 “Baseline bond principal contribution rate” defined.** ([NRS 612.220](#), [612.6132](#)) “Baseline bond principal contribution rate” means the rate established pursuant to [NAC 612.613](#).  
(Added to NAC by Employm’t Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.597 “Interest coverage ratio” defined.** ([NRS 612.220](#), [612.6132](#)) “Interest coverage ratio” means the rate of excess collection of money specified by the State in the trust indenture or other instrument or agreement in connection with the bonds to provide for the security of the payment of the bond interest and other bond obligations other than the bond principal secured by the principal coverage ratio.  
(Added to NAC by Employm’t Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.600 “Principal coverage ratio” defined.** ([NRS 612.220](#), [612.6132](#)) “Principal coverage ratio” means the rate of excess collection of money specified by the State in the trust indenture or other instrument or agreement in connection with the bonds to provide for the security of the payment of the bond principal.  
(Added to NAC by Employm’t Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.603 “Reserve ratio” defined.** ([NRS 612.220](#), [612.6132](#)) “Reserve ratio” has the meaning ascribed to it in [NRS 612.550](#).  
(Added to NAC by Employm’t Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.605 “Taxable wages” defined.** ([NRS 612.220](#), [612.6132](#)) “Taxable wages” means wages as determined pursuant to [NRS 612.545](#) which are paid by employers who are required to pay special bond contributions pursuant to subsection 1 of [NRS 612.6132](#).  
(Added to NAC by Employm’t Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.607 Issuance of bonds by State Board of Finance: Notice to Administrator by State Treasurer; calculation of rates for special bond contributions.** ([NRS 612.220](#), [612.6128](#), [612.6132](#))

1. If the State Board of Finance issues bonds pursuant to [NRS 612.6122](#), for each calendar year in which bond obligations and bond administrative expenses will be due, the State Treasurer must, on or before August 1 of the immediately preceding year, or as soon as practicable thereafter, notify the Administrator of the amount of bond obligations, the estimated amount of bond administrative expenses and the other amounts described in subsection 2 of [NRS 612.613](#) to permit the Administrator to determine the amount of special bond contributions required for the applicable calendar year. If no such bond obligations exist for a calendar year, the Administrator will not impose any special bond contributions.

2. After receiving the information described in subsection 1, the Administrator will calculate the rates for the special bond contributions pursuant to [NAC 612.613](#) to [612.623](#), inclusive. The Administrator will complete the calculations not later than September 15 of the year in which the information is due from the State Treasurer or 45 days after receiving the information from the State Treasurer, whichever is later.

(Added to NAC by Employm’t Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.610 Payment of special bond contributions; application of money received.** ([NRS 612.220](#), [612.6132](#))

1. An employer who is required to pay special bond contributions pursuant to subsection 1 of [NRS 612.6132](#) shall pay special bond contributions based upon the rates established pursuant to [NAC 612.613](#) to [612.623](#), inclusive, and, if applicable, the rate established pursuant to [NAC 612.625](#).

2. If such an employer pays less than the total amount due pursuant to [chapter 612](#) of NRS and any regulations adopted pursuant thereto, including, without limitation, [NAC 612.590](#) to [612.625](#), inclusive, the Administrator will apply the money received from that employer first to any special bond contributions for the bond interest and other bond obligations as defined in [NAC 612.615](#), then to any special bond contributions for the bond principal, and then to any other amounts owed pursuant to [chapter 612](#) of NRS and any regulations adopted pursuant thereto, as determined by the Administrator. As used in this subsection, “total amount due” includes, without limitation, the amount due from the employer for contributions for unemployment compensation, principal payments for special bond contributions and interest payments for special bond contributions.

(Added to NAC by Employm’t Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.613 Determination of baseline bond principal contribution rate.** ([NRS 612.220](#), [612.6132](#)) To determine the baseline bond principal contribution rate, the Administrator will:

1. Multiply the amount of the bond principal that will be due during the 12-month period beginning on May 1 of the immediately succeeding calendar year and ending on April 30 of the following calendar year by the principal coverage ratio;

2. Subtract from the result reached pursuant to subsection 1 the greater of:

(a) Zero; or

(b) The remainder obtained by subtracting the amount of bond principal that is required to be paid between the date of calculation and April 30 of the immediately succeeding calendar year from the amount of money available to pay that bond principal, including money then held by the State which is available to pay that bond principal and including the Administrator's estimate of contributions available to pay that bond principal which are expected to be received between the date of calculation and April 30 of the immediately succeeding calendar year to the extent such an estimate is permitted to be taken into account by the trust indenture or other instrument or agreement executed by the State in connection with the bonds, but excluding money in the State's account in the Unemployment Trust Fund of the United States Treasury; and

3. Divide the result reached pursuant to subsection 2 by 95 percent of the total estimated taxable wages for the immediately succeeding calendar year.

(Added to NAC by Employ'm't Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.615 Determination of baseline bond interest and expenses contribution rate.** ([NRS 612.220](#), [612.6132](#))

1. To determine the baseline bond interest and expenses contribution rate, the Administrator will:

(a) Multiply the amount of the bond interest and other bond obligations that will be due during the 12-month period beginning on May 1 of the immediately succeeding calendar year and ending on April 30 of the following calendar year by the interest coverage ratio;

(b) Subtract from the result reached pursuant to paragraph (a) the greater of:

(1) Zero; or

(2) The remainder obtained by subtracting the amount of bond interest and other bond obligations that are required to be paid between the date of calculation and April 30 of the immediately succeeding calendar year from the amount of money then held by the State which is available to pay that bond interest and those other bond obligations; and

(c) Divide the result reached pursuant to paragraph (b) by 95 percent of the total estimated taxable wages for the immediately succeeding calendar year.

2. As used in this section, "bond interest and other bond obligations" means the premium and interest payable on a bond, together with any amount owed under a related credit agreement or under any instrument or agreement in connection with the bonds, and bond administrative expenses. The term does not include the bond principal.

(Added to NAC by Employ'm't Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.617 Assignment of employer to one of four tiers.** ([NRS 612.220](#), [612.6132](#))

1. For the purposes of determining the special bond contributions due from each employer who is required to pay special bond contributions pursuant to subsection 1 of [NRS 612.6132](#), the Administrator will assign each such employer to one of four tiers.

2. Tier 1 consists of such employers who do not qualify for a contribution rate based on experience pursuant to [NRS 612.550](#).

3. Tier 2 consists of such employers who:

(a) Qualify for a contribution rate based on experience pursuant to [NRS 612.550](#); and

(b) Have a reserve ratio of less than zero.

4. Tier 3 consists of such employers who:

(a) Qualify for a contribution rate based on experience pursuant to [NRS 612.550](#);

(b) Have a reserve ratio of equal to or greater than zero; and

(c) Have a reserve ratio of less than the threshold reserve ratio determined pursuant to subsection 6.

5. Tier 4 consists of such employers who:

(a) Qualify for a contribution rate based on experience pursuant to [NRS 612.550](#);

(b) Have a reserve ratio of equal to or greater than zero; and

(c) Have a reserve ratio of equal to or greater than the threshold reserve ratio determined pursuant to subsection 6.

6. The threshold reserve ratio for Tier 4 is the lowest possible reserve ratio, rounded to the nearest tenth of a percent, which, using the most recent 12 months of data available, results in the qualification for Tier 4 of the employers who pay not more than 10 percent of all taxable wages from employers with a reserve ratio greater than or equal to zero.

(Added to NAC by Employm't Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.620 Determination of bond principal contribution rate for employers assigned to Tiers 1, 2, 3 and 4.** ([NRS 612.220](#), [612.6132](#))

1. To determine the bond principal contribution rate for employers assigned to Tier 1, the Administrator will multiply the baseline bond principal contribution rate by a factor of 0.45, then round the result up to the nearest one-hundredth of a percent.

2. To determine the bond principal contribution rate for employers assigned to Tier 2, the Administrator will multiply the baseline bond principal contribution rate by a factor of 1.40, then round the result up to the nearest one-hundredth of a percent.

3. To determine the bond principal contribution rate for employers assigned to Tier 4, the Administrator will multiply the baseline bond principal contribution rate by a factor of 0.25, then round the result up to the nearest one-hundredth of a percent.

4. To determine the bond principal contribution rate for employers assigned to Tier 3, the Administrator will:

(a) Determine the fraction of total taxable wages from employers who are not eligible for experience rating by dividing the taxable wages from such employers by the total taxable wages from all employers who are required to pay special bond contributions;

(b) Determine the fraction of total taxable wages from employers who are eligible for experience rating and who have a reserve ratio of less than zero by dividing the taxable wages from such employers by the total taxable wages from all employers who are required to pay special bond contributions;

(c) Determine the fraction of total taxable wages from employers who are eligible for experience rating and who have a reserve ratio that is equal to or greater than the threshold reserve ratio determined pursuant to subsection 6 of [NAC 612.617](#) by dividing the taxable wages from such employers by the total taxable wages from all employers who are required to pay special bond contributions;

(d) Determine the fraction of total taxable wages from employers who are eligible for experience rating, who have a reserve ratio of equal to or greater than zero and who have a reserve ratio that is less than the threshold reserve ratio determined pursuant to subsection 6 of [NAC 612.617](#) by subtracting the fractions calculated pursuant to paragraphs (a), (b) and (c) from 1;

(e) Multiply the bond principal contribution rate determined pursuant to subsection 1 by the fraction determined pursuant to paragraph (a);

(f) Multiply the bond principal contribution rate determined pursuant to subsection 2 by the fraction determined pursuant to paragraph (b);

(g) Multiply the bond principal contribution rate determined pursuant to subsection 3 by the fraction determined pursuant to paragraph (c);

(h) Subtract the results reached pursuant to paragraphs (e), (f) and (g) from the baseline bond principal contribution rate; and

(i) Divide the result reached pursuant to paragraph (h) by the fraction determined pursuant to paragraph (d), then round up to the next one-hundredth of a percent.

(Added to NAC by Employm't Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.623 Determination of bond interest and expenses contribution rate for employers assigned to Tiers 1, 2, 3 and 4.** ([NRS 612.220](#), [612.6132](#))

1. To determine the bond interest and expenses contribution rate for employers assigned to Tier 1, the Administrator will multiply the baseline bond interest and expenses contribution rate by a factor of 0.45, then round the result up to the nearest one-hundredth of a percent.

2. To determine the bond interest and expenses contribution rate for employers assigned to Tier 2, the Administrator will multiply the baseline bond interest and expenses contribution rate by a factor of 1.40, then round the result up to the nearest one-hundredth of a percent.

3. To determine the bond interest and expenses contribution rate for employers assigned to Tier 4, the Administrator will multiply the baseline bond interest and expenses contribution rate by a factor of 0.25, then round the result up to the nearest one-hundredth of a percent.

4. To determine the bond interest and expenses contribution rate for employers assigned to Tier 3, the Administrator will:

(a) Determine the fraction of total taxable wages from employers who are not eligible for experience rating by dividing the taxable wages from such employers by the total taxable wages from all employers who are required to pay special bond contributions;

(b) Determine the fraction of total taxable wages from employers who are eligible for experience rating and who have a reserve ratio of less than zero by dividing the taxable wages from such employers by the total taxable wages from all employers who are required to pay special bond contributions;

(c) Determine the fraction of total taxable wages from employers who are eligible for experience rating and who have a reserve ratio that is equal to or greater than the threshold reserve ratio determined pursuant to subsection 6 of [NAC 612.617](#) by dividing the taxable wages from such employers by the total taxable wages from all employers who are required to pay special bond contributions;

(d) Determine the fraction of total taxable wages from employers who are eligible for experience rating, who have a reserve ratio of equal to or greater than zero and who have a reserve ratio that is less than the threshold reserve ratio determined pursuant to subsection 6 of [NAC 612.617](#) by subtracting the fractions calculated pursuant to paragraphs (a), (b) and (c) from 1;

(e) Multiply the bond interest and expenses contribution rate determined pursuant to subsection 1 by the fraction determined pursuant to paragraph (a);

(f) Multiply the bond interest and expenses contribution rate determined pursuant to subsection 2 by the fraction determined pursuant to paragraph (b);

(g) Multiply the bond interest and expenses contribution rate determined pursuant to subsection 3 by the fraction determined pursuant to paragraph (c);

(h) Subtract the results reached pursuant to paragraphs (e), (f) and (g) from the baseline bond interest and expenses contribution rate; and

(i) Divide the result reached pursuant to paragraph (h) by the fraction determined pursuant to paragraph (d), then round up to the next one-hundredth of a percent.

(Added to NAC by Employm't Security Div. by R039-13, eff. 10-4-2013)

**NAC 612.625 Assessment and determination by Administrator of supplemental special bond contributions; notice to employers; due date. ([NRS 612.220](#), [612.6132](#))**

1. If the State Board of Finance issues bonds pursuant to [NRS 612.6122](#), at least 75 days before each payment for bond principal or interest is due, the Administrator will make the determination required by subsection 4 of [NRS 612.6132](#) and, if necessary, assess supplemental special bond contributions sufficient to pay all applicable obligations through April 30 of the immediately succeeding calendar year.

2. Employers will not receive experience credit for the supplemental special bond contributions.

3. To determine the supplemental special bond contribution rate, the Administrator will divide the amount needed to meet the obligations described in subsection 1 by 95 percent of the total taxable wages for the most recent 12 months for which data are available.

4. To determine the supplemental special bond contribution charged to each employer who is required to pay special bond contributions pursuant to subsection 1 of [NRS 612.6132](#), the Administrator will multiply the supplemental special bond contribution rate described in subsection 3 by the 12-month total taxable wages for the employer for the most recent 12 months for which data are available.

5. At least 30 days before the Administrator mails a bill to an employer for a supplemental special bond contribution, the Administrator will provide notice to the employer concerning the details of the supplemental special bond contribution.

6. The bill for a supplemental special bond contribution must include, without limitation, the date on which payment is due. The Administrator will provide a due date that is not less than 31 days after the date on which the bill is mailed and not more than 75 days after the date on which the bill is mailed.

(Added to NAC by Employm't Security Div. by R039-13, eff. 10-4-2013)

### Recommendation for Removal #3:

The Employment Security Division recommends the removal of NAC 612.056. This regulation is now directly contrary to statute, specifically NRS 612.265 as amended by the 2021 legislature. This deletion will be cleanup to conform with the new wording and sections of the statute.

#### **NAC 612.056 Release of information; fee. ([NRS 612.220](#), [612.265](#))**

1. The Administrator will provide information pursuant to subsection 3 of [NRS 612.265](#) if:
  - (a) An appropriate agency submits a request on a form prescribed by the Administrator; and
  - (b) The Administrator approves the release of the requested information.
2. The Administrator may charge a reasonable fee to cover any administrative costs incurred in providing information pursuant to subsection 3, 4, 5 or 6 of [NRS 612.265](#). The fee will not exceed the actual cost of providing the information, as determined from the records of the Division.

(Added to NAC by Employ'm't Security Dep't, eff. 6-3-85; A 12-19-89)

### Recommendation for Removal #4:

The Committee on Postsecondary Education (CPE) recommends the removal of the following six regulations related to the certification of Alcoholic Beverage Awareness Program (NAC 394.700 – 394.730). These regulations were established by NRS 369 in 2005 requiring CPE to certify Alcoholic Beverage Awareness programs through an unfunded mandate. No regulations exist in NRS 394 that provide CPE with authority of enforcement when a certified program violates the original conditions of approval. Statutes related to Alcoholic Beverage Awareness Programs can be found in NRS 369.600 – 369.635.

### ALCOHOLIC BEVERAGE AWARENESS PROGRAMS

**NAC 394.700 Definitions. ([NRS 394.411](#))** As used in [NAC 394.700](#) to [394.730](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 394.705](#) and [394.710](#) have the meanings ascribed to them in those sections.

(Added to NAC by Comm'n on Postsecondary Educ. by R134-05, eff. 11-17-2005; A by R042-11, 5-30-2012)

**NAC 394.705 “Alcoholic beverage awareness program” defined. ([NRS 394.411](#))** “Alcoholic beverage awareness program” has the meaning ascribed to it in [NRS 369.610](#).

(Added to NAC by Comm'n on Postsecondary Educ. by R134-05, eff. 11-17-2005)

**NAC 394.710 “Certified program” defined. ([NRS 394.411](#))** “Certified program” means an alcoholic beverage awareness program that is certified by the Administrator pursuant to [NAC 394.715](#).

(Added to NAC by Comm'n on Postsecondary Educ. by R134-05, eff. 11-17-2005)

#### **NAC 394.715 Requirements for certification of program. ([NRS 369.625](#), [394.411](#))**

1. An applicant for certification of an alcoholic beverage awareness program pursuant to [NRS 369.625](#) must submit to the Administrator:

(a) Evidence satisfactory to the Administrator that each instructor for the program is competent and qualified to provide instruction in the curriculum of the program; and

(b) A complete copy of the curriculum for the program, which must include, without limitation:

- (1) One hour in the clinical effects of alcohol on the human body;
- (2) Thirty minutes in the methods of identifying intoxicated persons;
- (3) Thirty minutes in the methods of discontinuing the service of alcoholic beverages to persons who are identified as intoxicated;
- (4) Thirty minutes in the applicable state and local laws concerning the selling and serving of alcoholic beverages;
- (5) Thirty minutes in the methods of preventing and halting fights, acts of affray and other disturbances of the peace;
- (6) Thirty minutes in the methods of preventing:

(I) The entry of minors into establishments in which minors are prohibited from loitering pursuant to [NRS 202.030](#);

(II) The purchase, consumption and possession of alcoholic beverages by minors as prohibited by [NRS 202.020](#), including, without limitation, the recognition of altered or falsified forms of identification; and

(III) The selling and furnishing of alcoholic beverages to minors as prohibited by [NRS 202.055](#); and

(7) A comprehensive closed-book final examination that contains questions on the subject matter identified in subparagraphs (1) to (6), inclusive.

Ê In addition to the requirements of this paragraph, the curriculum for a program may include any other information pertinent to alcoholic beverage awareness.

2. In addition to the requirements of subsection 1, if an alcoholic beverage awareness program will be offered through distance education, the applicant must submit to the Administrator evidence satisfactory to the Administrator that:

(a) The program complies with [NAC 394.521](#); and

(b) The examination required by subparagraph (7) of paragraph (b) of subsection 1 is proctored by the provider of the program or otherwise proctored by a person or entity approved by the Administrator.

(Added to NAC by Comm'n on Postsecondary Educ. by R134-05, eff. 11-17-2005; A by R042-11, 5-30-2012)

**NAC 394.725 Provider of certified program: Prohibition of certain activities.** ([NRS 369.625](#), [394.411](#)) A provider of a certified program shall prohibit:

1. An enrollee in the program from attending if the enrollee is intoxicated; and

2. The consumption of alcoholic beverages on the premises where the program is offered.

(Added to NAC by Comm'n on Postsecondary Educ. by R134-05, eff. 11-17-2005)

**NAC 394.730 Alcohol education card: Requirements for and record of issuance; form and contents.** ([NRS 369.625](#), [394.411](#))

1. A provider of a certified program shall issue an alcohol education card to each person who successfully completes the program. Successful completion of the program includes, without limitation, receiving a raw score of 75 percent on the final examination in each subject matter that is identified in subparagraphs (1) to (6), inclusive, of paragraph (b) of subsection 1 of [NAC 394.715](#).

2. Each alcohol education card issued as part of a certified program must:

(a) Be in a format prescribed by the Administrator;

(b) Consist entirely of plastic or a similar material that is difficult to duplicate or alter; and

(c) Include the following information:

(1) The name of the person to whom the card is issued;

(2) The name of the provider of the certified program;

(3) A unique identification number;

(4) The date of issuance; and

(5) The date of expiration.

3. Each provider of a certified program shall maintain a list of persons to whom a card is issued pursuant to this section.

(Added to NAC by Comm'n on Postsecondary Educ. by R134-05, eff. 11-17-2005)

#### **Recommendation for Removal #5:**

CPE recommends the elimination of NAC 394.600 as an outdated practice when the production of print material was prevalent medium for recruitment. National advertising is regulated on a federal level by the Federal Communications Commission and promotional material prohibitions are specified in NAC 394.590 to provide institutional guidance on acceptable practices. CPE reviews institutional advertising at the time of license renewal, change applications, VA approvals and when there is a student complaint related to recruitment practices. This regulation is burdensome to licensed institutions and is recommended for removal.

**NAC 394.600 Approval of advertisements.** ([NRS 394.411](#), [394.421](#), [394.445](#)) Any advertising through any medium which cannot be changed or deleted within a 7-day period, including, but not limited to, classified telephone



directory or national advertising, must be approved by the Administrator before it is printed. The full copy of the advertisement must be submitted in writing or in an electronic or other format approved by the Administrator.

[Comm'n on Postsecondary Educ., § 7.130, eff. 2-28-80] — (NAC A by R042-11, 5-30-2012)