

## **Operating Instructions for Federal Short-Time Compensation (STC)**

### **Introduction**

On February 22, 2012, the President signed the Middle Class Tax Relief and Job Creation Act of 2012 (Act) Public Law (Pub. L.) 112-96, which includes the Layoff Prevention Act of 2012 (Subtitle D of title II of the Act, section 2160 through section 2166 of the Act). Section 2163 of the Act permits states that currently do not have laws that provide for the payment of STC to enter into an agreement with the Secretary of Labor (Secretary) to implement a temporary federal STC program. Federal STC programs will be administered by the states acting as agents of the Secretary. States that choose to administer a federal STC program may begin operating the program starting from the date they enter into an agreement<sup>1</sup> with the Secretary through May 24, 2014.

The Act provides a (modified) definition of STC, adding it as a new subsection (v) to Section 3306 of the Federal Unemployment Tax Act (FUTA). All federal STC payments must be made in accordance with Section 3306(v), FUTA. The total amount of federal STC paid to an individual under an STC plan submitted by an employer and approved by the state must not exceed 26 times the amount of regular compensation (including dependents' allowances) under the applicable state law payable to that individual for a week of total unemployment. Also, the state must not approve an STC plan submitted by an employer that would provide payments to any individual(s) employed by such employer on a seasonal, temporary, or intermittent basis (see definitions below).

The federal government will reimburse the states for one-half (50 percent) of the amount of federal STC paid to an individual. The employer who submits an STC plan, which is approved by the state, is required to pay the state the remaining 50 percent of the federal STC benefit costs. Section 2163 of the Act allows "eligible" states (i.e., states without laws that meet the definition of Section 3306(v), FUTA) to administer and receive reimbursement of 50 percent the benefit costs of federal STC under the agreement. The amounts paid by the employer will be deposited into the state's account in the Unemployment Trust Fund (UTF); however, the amounts paid by the employer must not be used by the state in determining an employer's contribution rate under Section 3303(a) (1), FUTA. This means that the reimbursements may not be credited to the employers' reserve or applied as a voluntary contribution.

The Department of Labor (Department) is issuing this guidance to states as operating instructions for federal STC, including fiscal and reporting instructions. These operating instructions supplement UIPL No. 22 -12, *Short-Time Compensation*

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<sup>1</sup>This agreement may be terminated by either party upon 30 days written notice.

*Provisions in the Middle Class Tax Relief and Job Creation Act of 2012.* States must not deviate from these operating instructions without the prior approval of the Department.

**Definitions:** This section contains the definitions of terms used throughout this document. References are made to Section 2163 of the Act.

1. “Act” means the Middle Class Tax Relief and Job Creation Act of 2012.
2. “Affected Unit” means a specified plant, firm, business, department, shift, or other definable unit (i.e., group) consisting of at least two employees.
3. “Agreement” means the agreement between a state and the Secretary of Labor (Secretary) under which the agency makes federal STC payments acting as the Department’s agent (see draft Attachment III).
4. “Applicable State Law” means the state law of the state which is the application state for an individual or employer.
5. “Department” means the U.S. Department of Labor.
6. “Effective Date” means the date of enactment of the Act, February 22, 2012.
7. “Federal STC program” means the temporary STC program under Section 2163 of the Act that is operated under an Agreement with the Secretary to provide STC to eligible workers and under which 50 percent of the benefit costs are reimbursed by the federal government (provided that the state's law does not provide for the payment of STC as defined in Section 3306(v), FUTA).
8. “Intermittent employment” means “intermittent employment” as defined under state law. If the state law does not include a definition of this term, “intermittent employment” means employment that is not continuous but may consist of periodic intervals of weekly work and intervals of no weekly work. (See UIPL No. 22 - 12).
9. “Rapid Response” means those activities necessary to plan and deliver service(s) to enable dislocated workers to transition to new employment as quickly as possible, following either a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation. (WIA Final Rule, 20 CFR part 665.300(a)-665.330)
10. “Seasonal employment” means seasonal employment as defined under state law. If the state law does not include a definition of this term, “seasonal employment” means employment with an employer which experiences at least a twenty percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous 3 years as reported to the state agency, and/or employees are hired to work on a temporary basis by employers that need extra help during a particular season. (See UIPL No. 22 - 12.)
11. “Secretary” means the Secretary of Labor of the United States.

12. “Short-Time Compensation” or “STC” means compensation that conforms to the definition in Section 3306(v) of FUTA.
13. “State” means the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.
14. “STC employee” means an eligible employee employed by an STC employer covered by an STC employer plan approved by the state.
15. “STC employer” means an employer with a state-approved STC plan.
16. “STC employer plan” means a written plan submitted by an employer that meets the requirement of Section 3306(v), FUTA.
17. “STC weekly benefit amount (WBA)” means the amount of weekly STC payable for a reduced workweek as a proportion of the UC WBA corresponding to the number of hours in the reduced workweek.
18. “Temporary employment” means “temporary employment” as defined under the state law. If the state law does not include a definition of this term, “temporary employment” means employment where an employee is expected to remain in a position only a limited, as opposed to indefinite, period of time and/or is hired by a temporary agency to fill a gap in an employer’s workforce. (See UIPL No. 22 - 12.)
19. “Unemployment Compensation” or “UC” means cash benefits (including dependents’ allowances) payable to eligible individuals with respect to their unemployment under state law.

**Operating Instructions:**

1. Federal STC Program Claimant Eligibility.

- a. Basic Eligibility Requirements. To qualify for STC, employees must be part of an affected unit or group of employees, under a state-approved STC employer plan, whose workweek(s) have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the state to be appropriate, but in no case by more than 60 percent.

STC employees must be eligible for UC and have a remaining entitlement to UC in order to be eligible to receive STC. Employees participating in the STC employer plan must not be disqualified from UC on account of their participation in that plan. The amount of UC WBA payable to an employee participating in an STC employer plan is the proportion of the UC WBA corresponding to the number of hours in the reduced workweek. Employees must file continued claims (weekly or biweekly) as required under state law to receive STC payments.

- b. Individual Entitlements. As participants in an STC employer plan, individuals may:
  1. Participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Investment

Act (WIA) of 1998) to enhance job skills if the program is approved by the state;

2. Receive STC as provided in the STC employer plan up to 26 times the amount of regular UC (including dependents' allowances) payable under the applicable state law to the individual for a week of total unemployment;
3. Receive a payment of STC in the full UC weekly benefit amount for a week in which there is no work for the employee; and
4. Be entitled to a partial STC payment if they have earnings from an employer other than the STC employer (i.e., such earnings must reduce the STC payment in accordance with state law).

2. Federal STC Program Employer Requirements. Employer participation in a federal STC program is voluntary.

a. Basic Eligibility Requirements. An interested employer(s) must submit a plan to the state that is consistent with employer obligations under applicable federal and state laws. To participate in a federal STC program, in addition to meeting applicable state law provisions, employers must:

1. Identify and describe the affected unit of at least two workers that will have reduced work hours as part of an STC employer plan;
2. Provide a written STC employer plan to the state which includes the reason(s) for the reduction of the employees' work hours and the exact number of weeks of participation (not to exceed 26 weeks times the employees' UC WBA) and an estimate of the number of employee layoffs that would have occurred absent the ability to participate in the federal STC program (Note: the state may add other requirements to the plan subject to approval by the Department);
3. Provide assurance of compliance with employer obligations under federal and state laws;
4. Provide evidence of reduced work hours for not less than 10 percent and by not more than the percentage, if any, that is determined by the state, but in no case more than 60 percent of the normal weekly hours of work; and
5. Contribute one-half (50 percent) of the amount of the benefit costs of STC paid under the STC employer plan. This amount will be paid into the state's unemployment fund and will not be used for the purposes of calculating an employer's contribution rate under Section 3303 (a)(1), FUTA. Note: If employers fail to reimburse their share (50 percent) of STC costs under the federal STC program, the state must terminate the STC employer plan(s) approved under that program and collect the amounts owed through applicable state collection procedures, including any penalty and interest as required under state law.

3. State Responsibilities in Administering a Federal STC Program. Participating states must ensure they operate the federal STC program in accordance with the Agreement between the state and the Secretary, which means the state must:
  - a. Ensure STC payments are made in accordance with the requirements of Section 3306(v), FUTA, as added by Section 2161(a) of the Act;
  - b. Ensure that no STC employer plan is approved that permits the STC employer to pay STC to individuals who are employed in seasonal, temporary, or intermittent employment with the STC employer;
  - c. Ensure that STC employers pay 50 percent of the benefit costs of STC paid to their employees and ensure these payments are paid into the state's account in the UTF and are not used for the purposes of calculating the employer's contribution rate under Section 3303 (a) (1), FUTA;
  
4. Operating Procedures Necessary for Participating States. In implementing a federal STC program, a state UC agency must:
  - a. Develop a process to review, approve/disapprove, modify and revoke, as necessary, an STC employer plan;
  - b. Develop procedures related to STC employer appeals;
  - c. Develop procedures and processes for federal STC initial and continued claims taking and processing as well as monitoring to ensure STC payments are made promptly and properly;
  - d. Develop a coordinated enrollment and outreach strategy with potential state partners (i.e., Rapid Response teams, American Job Centers (also known as One-Stop Career Centers), Business Services representatives, and Labor Organizations) to educate appropriate parties and encourage eligible employers to participate in federal STC to avert layoffs;
  - e. Develop required reporting of federal STC program/activities information in accordance with the Department's guidance; and
  - f. Develop state operating instructions and training for staff to ensure timely and proper payments of STC.

Note: WIA Rapid Response funds may be used to support the state's federal STC program outreach strategy. Furthermore, states may submit SBR grant proposals to support federal STC implementation and outreach costs for those activities.

5. Federal STC Monetary/Non-Monetary Determinations. Individuals must be eligible for UC and have remaining entitlement to UC in order to receive STC.
  - a. Federal STC Weekly Benefit Amount (WBA). STC is limited to 26 times the amount of regular compensation (including dependents' allowances) payable under the applicable state law for a week of total unemployment.

The WBA for STC is calculated by first determining the individual's UC WBA (including dependents' allowances), as if the individual were totally unemployed. The federal STC rate is then determined by multiplying the WBA by the percentage, agreed upon and approved in the STC employer plan, which reduced the employee's workweek (i.e., hours of work). The resulting calculation would then be rounded, if necessary, to the nearest whole dollar according to the applicable state law. The result, after the rounding, is the federal STC WBA.

Example: An STC employer reduces the hours of an STC employee by 20 percent of the employee's 40-hour workweek. The STC employee has a UC WBA of \$400 with a \$25 dependents' allowance (DA).

|                                  |          |
|----------------------------------|----------|
| UC WBA                           | \$400.00 |
| DA                               | +\$25.00 |
| Total WBA and DA                 | \$425.00 |
| 20 percent reduction in workweek | x.20     |
| Federal STC payment              | =\$85.00 |

Changes in Work Hours. If an STC employee works for another employer in addition to the STC employer during a week and his or her combined hours of work for both employers are equal to or greater than the usual weekly hours of work with the STC employer, the employee is not entitled to STC for that week ("week" is defined under the applicable state law).

If an STC employee works in the same week for both the STC employer and another employer and his or her combined hours of work for both employers are less than his or her usual weekly hours of work, the benefit amount payable for that week will be the ratio of the UC WBA times the combined hours worked that week.

If an STC employee does not work during a week for the STC employer (or any other employer) and is otherwise eligible for UC under the applicable state law s/he will receive his or her full UC WBA for that week.

- b. Non-Monetary Determinations. STC employees are considered to be job attached and will meet the availability for work and work search test requirements while collecting short-time compensation by being available for the workweek as required by the state agency.
- c. Notices to Individuals. The state must give written notice to the STC employees of any determination or redeterminations. Each notice must include information about the right to reconsideration or appeal, or both, using the same process that is used for regular UC. In addition, the state

must provide the following notice to all STC claimants filing an initial claim for federal STC:

NOTICE

Under 18 U.S.C. §1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a Federal Offense, punishable by a fine or imprisonment for not more than five years, or both, under Title 18 of the United States Code.

6. Benefit Charging. Federal STC payments, unlike state STC payments, are non-chargeable payments, and must not impact the federal STC employer's contribution rate under Section 3303 (a)(1), FUTA.
7. Termination of the Federal STC Agreement. A state may terminate the Agreement with the Department upon providing 30 days written notice to the Department.
8. Termination of Federal STC Payments. If a state enacts a state law providing for the payment of STC under an STC program that meets the definition of the program under Section 3306(v), FUTA, as added by Section 2161(a) of the Act, the state will not be eligible to receive federal STC reimbursements beginning after the effective date of the state law. However, the state may be eligible to receive 100 percent federal reimbursements (up to 156 weeks) under Section 2162(a) of the Act (for payments of state STC) from the effective date of the state law and after the state signs/executes the appropriate Agreement (See UIPL No. 22 -12).
9. Notification. States entering into a federal STC agreement should explain to the employer community the availability and benefits of its federal STC program. The Department strongly encourages states to leverage WIA Rapid Response funds to support this layoff aversion strategy, if possible. Furthermore, states may submit Supplemental Budget Request grant proposals to support federal STC program implementation and outreach costs for those activities (See UIPL No. 22-12).
10. Written Agreement or Memorandum of Understanding (MOU). The Department recommends the UC agency enter into a written agreement or MOU with participating partners (i.e., Rapid Response Teams, Business Service Representatives, and/or American Job Centers (aka, One-Stop Career Centers). The written agreement/MOU should contain:
  - a. Names of all the parties to the agreement;
  - b. A brief description of the collaboration process jointly developed;

- c. Identification of those partners/agencies that will provide the specific services;
  - d. Description(s) of how feedback will be provided; and
  - e. Description(s) of the role of the service provider(s).
11. Record Maintenance and Disposal of Records. The state must maintain federal STC claims and payment data (including data on disqualifications, and appeals) as required by the Department.
- a. Record Maintenance. Each state must maintain records on the administration of the federal STC program, and make such records available for inspection, examination, and audit by federal officials or employees as the Secretary or the Department may designate or as may be required by the state law.
  - b. Disposal of Records. Electronic and paper records created in the administration of the federal STC program must be maintained by the state for three years after initial action (including appeals or court action) on the federal STC claim, or for less than the three-year period if copied by micro photocopy or by electronic imaging method. At the end of the three-year period, the federal STC records will be disposed of in accordance with state law.
12. Disclosure of Information. Information in records made and maintained by the state in administering Section 2163 of the Act must be kept confidential. Information in the records may be disclosed only in the same manner and to the same extent as information with respect to regular UC, and the entitlement of individuals, thereto, may be disclosed under provisions of the applicable state law meeting the requirements of 20 CFR part 603. This provision on the confidentiality of information obtained in the administration of Section 2163 of the Act will not apply, however, to information, reports and studies that have no personally identifiable information.
13. Redetermination. An STC employee filing a federal STC initial claim or weekly certification has the same rights to a reconsideration of the state's determination as provided claimants under the applicable state law for regular UC claims.
14. Appeals and Hearings.
- a. Applicable State Law. The applicable state law provisions concerning the right of appeal and fair hearing from a determination or redetermination or entitlement to regular compensation will apply to determinations and redeterminations of eligibility for or entitlement to federal STC. This also applies to the approval of STC employer plans.
  - b. Rights of Appeal and Fair Hearing. The right of appeal and opportunity for a fair hearing to claims for federal STC must be consistent with these

instructions and with Sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and 503(a)(3)).

- c. Promptness of Appeals Decisions.
  - 1) Decisions on appeals under the federal STC program must be in accordance with the “Standard for Appeals Promptness-Unemployment Compensation” in 20 CFR Part 650.
  - 2) Any applicable state law provision allowing the advancement or priority of UC cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, must apply to proceedings involving entitlement to federal STC.
  
- d. Inviolate Rights to Federal STC. Except as specifically provided in these instructions, the rights of individuals to federal STC will be protected in the same manner and to the same extent as the rights of persons to regular UC are protected under the applicable state law. The measures must include protection of claimants for federal STC from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, of their rights to federal STC. In the same manner and to the same extent, individuals will be protected from discrimination and obstruction in applying for and receiving federal STC.

15. Fraud, Overpayment and Recovery. Recovery of any overpayment established on a claim for federal STC will be conducted in accordance with the applicable state law for the recovery of regular UC overpayments.

## **Reporting Instructions**

1. **General.** The federal STC ETA 5159, Claims and Payment Activities Work-share Report (OMB No. 1205-0010) must be submitted electronically through the UI Required Reports electronic reporting system. Federal STC activity should also be reported on the ETA 2112 UI Financial Transaction Summary Report (OMB No. 1205-0154) as specified below in section 2. Reporting will begin with the first reporting period in which the state enters into a federal-state Agreement to operate federal STC. States should refer to the most recent version of ET Handbook No. 401, the UI Reports Handbook, for copies of the reports, due dates, and further instruction.
  
2. **Data Elements to be Reported.**
  - a. ETA 5159. The STC-specific report form for the ETA 5159 has one additional cell that must be reported. This cell for federal STC describes the number of employers with STC plans.

**Section D cell C10, Number of Participating Employers.** Enter the total number of employers who have state agency approved federal STC plans. If a single employer has multiple plans approved by the state, or multiple plans within an establishment, count that employer as an STC employer only once.

- b. ETA 2112. Transactions involving federal STC reimbursed with federal funds must be reported in the aggregate on the electronic ETA 2112 report. Information reflecting federal STC transactions must be reported as follows:
- 1) **Line 23b, Short-Time Compensation - Federal**. Report on line 23b, column F the amount of federal STC funds deposited into the state's benefit payment account.
  - 2) **Line 42b, Short-Time Compensation - Federal**. Report on line 42b, column F the net amount of STC paid for using federal STC funds. States are to report gross federal STC benefit disbursements in column F regardless whether amounts of federal tax withholdings are applied to federal STC benefit payments.
3. **Office of Management and Budget (OMB) Approval**. This UIPL and its attachments were submitted to OMB for Paperwork Reduction Act approval. The UIPL and attachments were approved by OMB (OMB Number 1205-0499, expires 12/31/2012) on June 14, 2012. The Employment and Training Administration (ETA) is currently in the process of renewing this collection, and extending its authorization to collect data related to the federal STC program through 2015.