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**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 04-10,
Change 10**

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Work Search Requirements for Emergency Unemployment Compensation (EUC) Recipients

1. **Purpose.** To advise state workforce agencies of the new provisions under the Middle Class Tax Relief and Job Creation Act of 2012 governing work search requirements for EUC recipients and state responsibilities for conducting random audits of recipients' work search activities.

2. **References.**

- *Middle Class Tax Relief and Job Creation Act of 2012*, (Public Law (Pub. L.) 112-96), Title II, Sections 2001-2184 (Extended Benefits, Reemployment and Program Integrity Improvement Act (Act));
- *Supplemental Appropriations Act, 2008*, as amended, Pub. L. 110-252, Title IV, Sections 4001-4007 (EUC Act);
- Training and Employment Guidance Letter (TEGL) No. 20-11, *Reemployment Services and Reemployment and Eligibility Assessments for Recipients of Emergency Unemployment Compensation*;
- Unemployment Insurance Program Letter (UIPL) No. 23-08, *Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment Compensation*, and its Changes 1, 2, 3, 4, 5, and 6; and
- UIPL No. 04-10, *Extension of Temporary Provisions—Emergency Unemployment Compensation, 2008, Federal Additional Compensation, and Extended Benefits*, and its Changes 1, 2, 3, 4, 5, 6, 7, 8, and 9.

3. **Background.** Pub. L. 112-96 amended Section 4001(b) of the EUC Act by adding new Subsection (4) that conditions EUC eligibility upon a claimant being "able to work, available to work, and actively seeking work." New Section 4001(h)(1) defines "actively seeking work" to mean that an individual must:

- Register for Employment Services as prescribed by the state agency;

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- Engage in an active search for work that is appropriate in light of the labor market and the individual’s skills and capabilities, and includes an appropriate number of employer contacts as determined/prescribed by the state;
- Maintain a record of his/her work search, including employers contacted, method of contact, and date of contact; and
- When requested, provide the work search record to the state agency.

Section 4001(h)(2) was added requiring the Secretary of Labor to establish a minimum number of claims for which work search records must be randomly selected for audit in any given week. States must conduct these random audits to ensure that claimants receiving EUC are meeting the state’s work search requirements. This UIPL provides guidance to states for these audits.

4. Notification of Work Search Requirements. UIPL No. 04-10, Change 9, and TEGL No. 20-11, which the Employment and Training Administration (ETA) issued recently on amendments to the EUC Act made by the Middle Class Tax Relief and Job Creation Act, advised states to immediately begin notifying EUC claimants that they must meet new EUC work search requirements. The UIPL advised states that they may make such notification by mail, Internet, or interactive voice response telephone systems.

Exceptions to the Work Search Requirements

- An EUC claimant participating in a state-approved training program may not be disqualified from receiving benefits for unavailability for, or not actively seeking, work or refusal to accept work (see Section 3304(a)(8), Federal Unemployment Tax Act).¹
- Section 4001(h)(1)(A) requires state Employment Service registration “in such a manner and to such extent as prescribed by the state agency.” Therefore, if the agency under state law does not require registration for certain groups, such as union members who seek work through a hiring hall, these groups are excused from this requirement.
- Section 4001(h)(1)(B) requires an active search for work that is “appropriate in light of the employment available in the labor market, the individual’s skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the state.” If state law permits or requires some workers to seek work through a hiring hall, that could impact the number of employer contacts that is appropriate for these claimants. Further, the state may determine that the appropriate number of contacts for an individual on a short term or seasonal layoff or with a letter of “intent to hire” from an employer is zero, since the individual is job attached.

Exception Related to Demonstration Projects

The active search for work requirement will not apply to individuals participating in a demonstration project authorized under section 305, SSA. Section 305(e) authorizes two types of activities that a demonstration project may include: subsidies for employer-provided training,

¹ That section provides: “(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work). . . .”

such as wage subsidies; and direct disbursements to employers who hire individuals receiving Unemployment Compensation (UC), including EUC.

With regard to the first activity, section 3304(a)(8), FUTA, provides that “compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work)[.]”

Since training approved under a demonstration project is approved training, the work search requirement will not apply to individuals while in that training.

With regard to the second activity, an individual will be ineligible for UC/EUC while employed by an employer participating in a demonstration project. Accordingly, the work search requirement will not apply to this individual while in that employment. States are not required to and should not modify their state laws or otherwise weaken work search requirements in order to participate in the demonstration project.

5. Auditing Work Search Records. Section 4001(h)(2) requires the U.S. Department of Labor (Department) to “establish for each state a minimum number of claims for which work search records must be audited on a random basis in any given week.” Attachment 1 to this UIPL includes procedures to help states select the sample of claims to be audited each week. The universe is the total number of paid EUC weeks, and the sample size is 0.5 percent of that universe. The procedures in Attachment 1 are designed so that the number of resulting samples will be between 50 and 1,500. Random audits are intended to be conducted for claims paid for a specific week of unemployment. States that use bi-weekly certifications for continued claims filing must ensure that each paid week is included in the pool of claims to be sampled.

- For those claims randomly selected, the audit of the EUC recipients’ work search must include a review of the claimants’ work search activities for the selected week to determine whether the claimants met the work search requirements for that week as prescribed by the state.
- To help claimants meet the new work search requirements, the state may develop a work search log that claimants can use to track their work search efforts, recording at a minimum, employers contacted, method of contact, and date contacted. The log may be returned by mail, e-mail, Internet, or by any cost effective means. There is no requirement that a work search audit for a claim record randomly selected under section 4001(h)(2) be conducted with the claimant present. However, if the only way to verify that the work search requirements were met is through an in person review, states must schedule the claimant for an in-person interview.

Verification of Activities

In conducting random audits, states must attempt to verify at least one work search activity or contact listed by the claimant. A number of different methods may be used by states to verify work search activity. For example, if the claimant indicated that s/he sent a resume to an employer by e-mail, the state may verify that the resume was sent by requesting that the claimant

provide a snapshot of his/her “Sent Items” e-mail log. This will contain information such as the recipient, subject of the document, the date and time the document was received by the intended recipient, etc. Verification can also be made by the claimant providing documentation that shows the employer’s acknowledgement of the application and/or resume. In the states’ notifications to claimants, the state should advise claimants that they should retain copies of such e-mail exchanges and/or other electronic evidence as part of their work search records. Another verification method would be contacting the employer by phone, as appropriate. This is a traditional practice that states already use. Note: Verification with the state Employment Service alone that a claimant has registered as prescribed by the state does not satisfy this verification requirement since the claimant must also contact employers to meet the EUC work search requirement.

The statute makes these audits mandatory; it does not allow the Department to waive the requirement. Thus, for monitoring purposes, states must report the audit activities that correspond to the “weeks compensated” as reported on the EUC-specific ETA 5159 (Item 14). States must determine the acceptability of the work search documentation presented and whether the claimant met the requirements or was appropriately excused from the work search requirement. Any issues related to EUC work search requirements, such as when individuals do not provide documentation of their work search activities, must be referred for adjudication, as must any other issue uncovered during the audit. As noted above, the Department recognizes that states may, under their state law, waive the work search requirements for certain reasons, such as when individuals are attending approved training. Thus, when a claimant whose claim is selected for audit is in approved training, the state will review the individual’s approved training status to ensure such waiver was appropriate.

6. Work Search Audit Administrative Funding. State agencies should include requests for reimbursement for the administrative costs associated with the auditing of work search records on line 26 of the online ETA UI3 - Quarterly Financial Report (Regular). Thirty minutes are allowed for each audit. The calculation for determining such costs will follow the computation of above base earnings and should be documented in the comments section of the UI3. An example of this calculation is as follows: ((number of audits conducted x 30 minutes)/(standard quarterly hours paid x 60 minutes)) x experience leave factor x quarterly PS/PB rate x 1.19 = total reimbursement. Note: The standard quarterly hours paid, experience leave factor and quarterly PS/PB rate are reported on the UI3 under the section B heading, line 23 and line 24 respectively. The number of audits conducted for which reimbursement is requested must agree with the number of random audits conducted as reported on line 3 of the ETA 9162, Random Audit of EUC 2008 Claimants.

7. Required Reporting. The reporting requirements for the EUC program that were in place before these amendments have not changed. However, the new work search requirements and the requirement that states conduct random audits of claimants’ work search activities necessitate that states track and report these audit activities and the resulting outcomes.

Attachment 2 to this UIPL contains the instructions for completing the new Form ETA 9162, which states will use to report aggregate random audit activity and outcomes. This report was recently approved (OMB No. 1205-0495) and must be submitted, on a quarterly basis, through

the current electronic reporting system that states use to submit virtually all Unemployment Insurance required reports. The Department anticipates that this report will be available in the reporting system by mid-July, 2012, and that the first report, for activity during the second calendar quarter of 2012, will be due November 1, 2012. States with questions about the new Form ETA 9162 or Attachment 1 to this UIPL should contact the appropriate Regional Office.

8. Interpretation. The information in this document is issued to the states and cooperating state agencies as guidance provided by the Department in its role as the principal in the EUC program. As agents of the Federal government, the states and cooperating state agencies may not deviate from this guidance without the prior approval of the Department.

9. Action Requested. Administrators are to provide this guidance to the appropriate staff.

10. Inquiries. Questions should be directed to the appropriate Regional Office.

11. Attachments.

Attachment 1 - Sampling Procedures for EUC Claims Work Search Audits

Attachment 2 - Form ETA 9162 Random Audit of EUC 2008 Claimants