

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DFAS
	DATE January 19, 2021

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 12-21

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH /s/
Assistant Secretary

SUBJECT: Implementation of Sequestration under the Budget Control Act of 2011 (BCA) for Mandatory Unemployment Insurance Programs for Fiscal Year (FY) 2021

1. **Purpose.** To advise states of sequestration rules for FY 2021 to ensure State Workforce Agencies (SWAs) apply these rules to mandatory Unemployment Insurance (UI) programs. These rules include the application of sequestration on delayed benefit payments for prior FYs and the resulting administrative costs.
2. **Action Requested.** The Employment and Training Administration (ETA) advises State Administrators to provide this guidance to appropriate staff.
3. **Summary and Background.**
 - a. Summary - As required by the sequestration order and set out in the February 10, 2020, Office of Management and Budget (OMB) Report to the Congress on the Joint Committee Reductions for FY 2021, a 5.7 percent reduction in non-exempt mandatory programs are effective as of October 1, 2020, for FY 2021.
 - b. Background - The BCA amended the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) to require reductions in budgetary authority, known as sequestration, beginning on January 2, 2013, unless Congress passed, and the President signed, a bill that reduced the deficit by at least \$1.2 trillion over 10 years. Such action did not occur and sequestration rules have been in effect since FY 2013.
4. **Sequestration in FY 2021.**
 - a. **Impact on the Mandatory UI Programs.** Below is a list of programs, projects, and activities (PPAs) related to the mandatory UI programs and the applicability of sequestration to each PPA.

RESCISSIONS None	EXPIRATION DATE September 30, 2021
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The following PPAs are exempted from sequestration:

- 1) Unemployment compensation paid by a state from its account in the Unemployment Trust Fund;
- 2) Title XII, Social Security Act (SSA), advances to states;
- 3) Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX);
- 4) PPAs enacted through Public Law (Pub. L.) 116-127, the Families First Coronavirus Response Act, including Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA); and
- 5) PPAs enacted through Pub. L. 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Note: Section 254 of the BBEDCA requires OMB to issue a sequestration preview report to Congress as a prerequisite to implementing sequestration. Because Pub. L. 116-127 and Pub. L. 116-136 were enacted after OMB issued its Reports to Congress on the Joint Committee Reductions for FY 2020 and FY 2021, programs and provisions enacted by these laws are exempt from sequestration for FY 2020 and FY 2021. The Federal Emergency Management Agency advises that there is no impact on Disaster Unemployment Assistance (DUA) administrative funding or benefits.

Sequestration applies to the following PPAs:

- 1) The Federal share of Extended Benefits (EB) with the exception described below; and
- 2) Trade Adjustment Assistance (TAA) funds appropriated under the Federal Unemployment Benefits and Allowances Account (FUBA).

b. **Impact of Sequestration on EB.** Pub. L. 116-127 mandated that the federal share of EB be increased from 50 percent to 100 percent through December 31, 2020. The additional 50 percent authorized through Pub. L. 116-127 is not subject to sequestration, however the 50 percent application to the permanent EB program as authorized in the Federal-State Extended Unemployment Compensation Act (EUCA) of 1970 remains subject to sequestration. The applicable percentage of sequestration reduction to the permanent 50 percent Federal share of EB costs for FY 2021 is 5.7 percent starting with weeks of unemployment ending on September 26, 2020, and ending with weeks of unemployment ending on September 25, 2021. Unless a state amends its law to reduce EB, as explained below, a reduction in the Federal share of EB due to sequestration means the state becomes responsible for paying the remaining EB share from its own funds, i.e., the amount represented by the 5.7 percent reduction to the 50 percent Federal share provided under EUCA. For any EB payments made in FY 2021 relating to benefit weeks that occurred in prior fiscal years, the FY 2021 sequestration reduction of 5.7 percent must be applied.

Authority for States to Reduce EB Weekly Benefit Amounts due to Sequestration

Under EUCA, the EB weekly benefit amount (WBA) is “the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for such week for total unemployment.” (Section 202(b)(2), EUCA.) However, section 256(h)(2) of BBEDCA (2 U.S.C. 906(i)(2)) permits states to reduce EB WBAs if the Federal share of EB costs is reduced under a sequestration order. That section provides:

“(A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 904 of this title by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of Title 26.”

As a condition of reducing EB WBAs, state law must authorize the reduction in EB WBAs as specified in the BBEDCA. Note that actual reductions in Federal spending could not be achieved if WBAs are reduced without also reducing individuals’ remaining entitlement or maximum benefit amount (MBA) for EB. For this reason, state law must also provide for reductions in EB remaining entitlement and MBA if it provides for reducing EB WBAs.

Any state amending its law to provide for EB reductions due to sequestration must provide notice to claimants and an opportunity to appeal the calculation of the amounts. The notice should also inform claimants that appeal of the sequestration reduction itself will not succeed as sequestration is mandated by Federal law.

Any states considering a change in state law to reduce the WBA is encouraged to work closely with ETA to ensure conformity with federal UC law.

c. Option for applying the sequestration

States not amending their law must apply the sequestration cuts to EB benefits in the fashion deemed most efficient and cost effective. One option would be to withdraw and pay the claimants 100 percent of the WBA entitlement at the time of weekly payment and then at fiscal year-end determine the full amount of EB withdrawn from the Extended Unemployment Compensation Account for these benefits. The state would then return to such account the dollar amount representing the rate of sequestration applied to 50 percent of the amount withdrawn. For example, if a state withdrew \$10,000,000 for EB payments during the year, 50 percent or \$5,000,000 would be subject to sequestration, and 5.7 percent of \$5,000,000 equals \$285,000. In this example, the state would return \$285,000 to the Extended Unemployment Compensation Account.

d. **Impact of Sequestration on TAA.** The applicable percentage of reduction to TAA is 5.7 percent in FY 2021. As in previous fiscal years, using the flexibility under BBEDCA, the Department will apply the full TAA Program sequestration to the funding for Training and Other Activities, which are the funds available for training, employment and case management services, out-of-area job search, relocation allowances, and related administrative expenses. The reductions will not be applied to Trade Readjustment Allowances (TRA), Reemployment Trade Adjustment Assistance (RTAA) benefits, or Alternative Trade Adjustment Assistance (ATAA) available under the TAA Program.

5. **Inquiries.** Please direct inquiries to the appropriate ETA Regional Office.

6. **References.**

- Federal-State Extended Unemployment Compensation Act of 1970 (Federal-State EUCA) (Pub. L. 91-373);
- Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) (Pub. L. 99-177), as amended by the Budget Control Act of 2011;
- Budget Control Act of 2011(BCA) (Pub. L. 112-25);
- Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96);
- American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112-240);
- Families First Coronavirus Response Act of 2020 (Pub. L. 116-127);
- Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (Pub. L. 116-136)
- Unemployment Insurance Program Letter (UIPL) No. 23-08, dated July 7, 2008, *Supplemental Appropriation Act, 2008, Title IV – Emergency Unemployment Compensation*, and its changes 1 through 6;
- UIPL No. 04-10, Change 3, *Emergency Unemployment Compensation Program Extension and Modification, Extended Benefits Temporary Provisions Extension, and Expiration of Federal Additional Compensation*, and Change 9, dated March 5, 2012, *Extension and Modification of Emergency Unemployment Compensation, 2008 (EUC08) and Extension of Temporary Extended Benefits (EB) Provisions*, issued July 23, 2010;
- UIPL No. 22-12, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*, issued June 18, 2012;
- UIPL No. 13-13, *Implementation of Sequestration under the Budget Control Act of 2011 for the Unemployment Insurance Programs for Fiscal Year 2013*, and Change 1, dated April 9, 2013, *Implementation of Sequestration under the Budget Control Act of 2011 for the Unemployment Insurance Programs for Fiscal Year 2013 – Questions and Answers: Emergency Unemployment Compensation*, issued March 8, 2013;
- UIPL No. 15-13, *Unemployment Insurance (UI) Supplemental Funding Opportunity to Fund Costs Attributable to the Implementation of the Sequestration Impacts on the Emergency Unemployment Compensation (EUC) Program*, issued March 29, 2013;
- UIPL No. 27-13, *Unemployment Insurance (UI) Supplemental Funding Opportunity to Fund Costs Attributable to the Implementation of the Sequestration Impacts on the Emergency Unemployment Compensation (EUC) Program in Fiscal Year (FY) 2014*, issued September 9, 2013;

- UIPL No. 30-13, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2014*, issued September 27, 2013;
- UIPL No. 2-15, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2015*, and Change 1, dated January 22, 2015, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2015*, issued October 15, 2014;
- UIPL No. 12-16, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2016*, issued March 29, 2016;
- UIPL No. 9-17, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2017*, issued January 19, 2017;
- UIPL No. 6-18, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2018*, issued March 30, 2018;
- UIPL No. 1-19, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2019*, issued December 12, 2018;
- UIPL 18-19, dated September 16, 2019, *Implementation of Sequestration under the Budget Control Act of 2011 (BCA) for Mandatory Unemployment Insurance Programs for Fiscal Year (FY) 2020*, issued September 16, 2019;
- Office of Management and Budget (OMB) Report to the Congress on the Joint Committee Reductions for Fiscal Year 2020, dated March 18, 2019; and
- Office of Management and Budget (OMB) Report to the Congress on the Joint Committee Reductions for Fiscal Year 2021, dated February 10, 2020.

7. **Attachments.** Not applicable.