

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 21-20

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH /s/
Assistant Secretary

SUBJECT: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Short-Time Compensation (STC) Program Provisions and Guidance Regarding 100 Percent Federal Reimbursement of Certain State STC Payments.

1. **Purpose.** To provide states with an overview of STC program provisions in Title II, Subtitle A of the CARES Act, Public Law (Pub. L.) 116-136, and to provide guidance regarding 100 percent federal reimbursement of certain state STC payments.
2. **Action Requested.** The U.S. Department of Labor’s (Department) Employment and Training Administration (ETA) requests that State Workforce Administrators provide the information in this Unemployment Insurance Program Letter (UIPL) and all attachments to appropriate program and other staff in state workforce systems as they implement the Unemployment Insurance (UI)-related provisions that respond to the economic effects of the Coronavirus Disease 2019 (COVID-19).
3. **Summary and Background.**
 - a. Summary – On March 27, 2020, the President signed into law the CARES Act, which was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The CARES Act includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. The UI-related provisions are summarized in UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued on April 2, 2020.

Section 2108 of the CARES Act provides for temporary 100 percent federal financing of STC payments in a state with a STC program (as defined in section 3306(v) of the Federal Unemployment Tax Act (FUTA) in its law, whether that program is new or pre-existing. Section 2108 also makes a technical correction to section 3306(v)(6), FUTA, by striking “Workforce Investment Act of 1998” and inserting “Workforce Innovation and Opportunity Act.” Section 2109 provides for a state without a qualifying STC

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program in its law to enter into an agreement with the Secretary of Labor (Secretary) to operate a temporary federal STC program, for which the state will receive federal reimbursement equaling one half of the benefit costs. Section 2110 provides \$100 million in grants to support states in implementing and administering STC programs in their laws and promoting and enrolling employers, including conducting outreach to employers to promote the use of STC. Section 2111 provides that the Department will provide assistance and guidance to states implementing STC programs.

This UIPL provides states with an overview of the STC program provisions in the CARES Act and guidance regarding 100 percent federal reimbursement of certain state STC payments. As explained in UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued on April 4, 2020, individuals who are receiving STC payments are entitled to receive an additional \$600 per week from the Federal Pandemic Unemployment Compensation program with respect to weeks of unemployment ending on or before July 31, 2020.

- b. Background – The STC program (also known as “worksharing” or “shared work”) is a lay-off aversion program in which an employer, under a state-approved plan, reduces the hours for a group of workers and these workers in turn receive a reduced unemployment benefit payment. In the context of re-opening businesses closed temporarily by a pandemic, STC can also serve as a means of bringing most or all of a temporarily laid-off workforce back to the job, even if social-distancing measures, a decline in business, or other factors prevent operating at full staffing levels full time. Specifically, this benefit may be made available to individuals returning to work with reduced hours who worked for the employer prior to the temporary lay-off due to COVID-19. This program preserves employees’ jobs and employers’ trained workforces during a disruption to the firm’s regular business activity by reducing hours of work for an entire group of affected employees, rather than by laying off some employees while others continue to work full time. The STC benefit payment cushions the adverse effect of the reduction in business activity on workers and, by maintaining their connection to their employers, ensures that these workers will be available to resume prior employment when business demand increases.

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) included several STC-related provisions. UIPL No. 22-12, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*, issued on June 18, 2012, provides an overview of these provisions. UIPL No. 22-12, Change 1, issued on December 21, 2012, provides states with model legislative language that conforms to the new definition of STC in section 3306(v), FUTA (26 U.S.C. § 3306(v)). UIPL No. 22-12, Change 2, issued on February 7, 2014, informs states that the Secretary approved nine optional provisions under section 3306(v)(10), FUTA, which provide states some additional flexibilities regarding their STC programs. For additional information, please see materials on the STC landing page on WorkforceGPS at <https://stc.workforcegps.org/>.

Employer participation in an STC program is voluntary. An employer must submit a written plan to the state unemployment compensation (UC) agency, which is subject to the state's approval. The employer's plan must specify the percentage reduction in the workweek for affected employees and be consistent with employer obligations under applicable federal and state laws. Employers must maintain (to the same extent as other employees not participating in the STC program) health benefits and retirement benefits under Sections 414(i) and (j) of the Internal Revenue Code (IRC) (26 U.S.C. §§ 414(i) and (j)) for employees in the affected unit, despite the reduced hours. Employees must be available for their workweek to meet the "able and available for work" requirements.

The Department addressed permissible flexibility for states under existing federal law in response to the COVID-19 pandemic in UIPL No. 10-20, *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*, issued on March 12, 2020. This UIPL reminded states that STC can be an important resource for employers whose businesses temporarily decline.

The President signed the Families First Coronavirus Response Act (Pub. L. 116-127) on March 18, 2020, which includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) set out in Division D. Section 4104 of EUISAA required the Department to provide technical assistance and guidance to support states in establishing, implementing, and improving employer awareness of the STC program, however, Section 4104 of EUISAA was repealed and superseded by Section 2111 of the CARES Act.

Importance of Program Integrity. The programs and provisions in the CARES Act operate in tandem with the fundamental eligibility requirements of the federal-state UI program, which remain in force. In addition, some of the CARES Act programs include new eligibility requirements that states will need to apply. For example, individuals are only entitled to benefits if they are no longer working through no fault of their own, and are able and available to work.

States play a fundamental role in ensuring the integrity of the UI program. While states have been provided some flexibilities as a result of COVID-19, those flexibilities are generally limited to dealing with the effects of COVID-19, as discussed in UIPL Nos. 10-20 and 13-20. States must ensure that individuals only receive benefits in accordance with the statutory provisions in the CARES Act. Further, quitting work without good cause to obtain benefits under the regular UC program or any other UI program, including those authorized in the CARES Act, is fraud.

The Department is actively working with states receiving funding under the CARES Act to provide benefits only to those who are entitled to such benefits. The Department will also be actively engaged with its Office of the Inspector General (OIG) to ensure program integrity. The Act includes an appropriation of \$26 million to the Department's OIG to carry out audits, investigations, and other oversight activities related to states' adherence to existing UI laws and policies, as well as to the provisions of the CARES Act.

4. Temporary 100 Percent Federal Financing of Certain STC Payments in States with Programs in Law.

A. In General. Section 2108 of the CARES Act provides for 100 percent federal reimbursement of a state's STC benefit costs if the state's STC law conforms to the program definition in Section 3306(v), FUTA (26 U.S.C. § 3306(v)). A reimbursement is available for weeks of unemployment beginning on or after the date of enactment of the CARES Act (March 27, 2020) and ending on or before December 31, 2020.

If a state, which does not already operate an STC program, enacts a law providing for the payment of STC under a program that meets the definition in section 3306(v), FUTA (26 U.S.C. § 3306(v)), the state will be eligible for reimbursement of STC payments made with respect to weeks of unemployment beginning on or after the effective date of such enactment, through weeks of unemployment ending on or before December 31, 2020.

To qualify for reimbursement of STC costs paid under state law pursuant to Section 2108 of the CARES Act, the state's STC program is not required to be permanent. However, a state will not be eligible for an STC grant under Section 2110 of the CARES Act if its STC law is subject to discontinuation.

B. Limitations on Reimbursement. Section 2108(a)(3) of the CARES Act sets out two limitations on reimbursement of state STC costs. First, no reimbursement will be made when STC is paid to an individual during a benefit year in an amount that exceeds 26 times the amount of regular UC (including dependents' allowances) payable for a week of total unemployment to such individual.

Second, no reimbursement will be made for payment of STC if the individual is employed by the employer on a seasonal, temporary, or intermittent basis, as defined under state law. This limitation does not include individuals normally employed on a part-time basis whose hours are reduced under an STC plan.

Consistent with UIPL No. 22-12, if state law does not include definitions of these terms, states will use the following definitions for purposes of determining which state STC benefits are subject to 100 percent federal reimbursement:

Seasonal Employment: Employment with an employer that experiences at least a 20 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 three years as reported to the state agency, and/or employment on a temporary basis by an employer that needs extra help during a particular season (*e.g.*, holiday season, summer season, *etc.*).

Temporary Employment: Employment wherein an employee is expected to remain in a position for only a limited period of time and/or is hired by a temporary agency to fill a gap for a limited period of time in an employer's workforce.

Intermittent Employment: Employment that is not continuous but may consist of periodic intervals of weekly work and intervals of no weekly work.

- C. **Charging of Federally Reimbursed STC Benefits.** State laws provide for the financing of UC payments, including STC, in two ways: (i) experience rated state unemployment taxes, and (ii) for certain employers only, reimbursement of benefit costs (payment in lieu of contributions) attributable to service with the employer. States typically would be required to charge STC benefit costs because employers participating in state STC programs are directly causing unemployment (or STC payments are attributable to service with the employer) by reducing the hours their employees work. However, because the associated STC costs are being 100 percent reimbursed by the federal government, the state may (if permissible under state law) choose not to charge (or not to require payment in lieu of contributions) for STC payments that are subject to 100 percent reimbursement by the federal government. When the 100 percent federal reimbursement ends, states must resume applying their charging provisions to STC payments.

The federal government will not reimburse states for payments of STC in excess of 26 times the amount of regular compensation payable for a week of total unemployment, or to individuals employed by a participating employer on a seasonal, temporary, or intermittent basis. Accordingly, the state must, consistent its own state laws, charge the employer (or require payment in lieu of contributions) for such benefit amounts, or, if the state determines it is appropriate, relieve employers from charging (or from making payments in lieu of contributions) if permissible under its state law. Note that the \$600 FPUC payment on top of the STC benefits is not considered when calculating payments for STC in excess of 26 times the amount of regular compensation payable for a week of total unemployment for purposes of the amount of the federal reimbursement.

When considering whether or not to relieve employers from charging (or making payments in lieu of contributions) if permissible under state law, states should take into consideration the potential effect on the solvency of their accounts in the Unemployment Trust Fund (UTF) and, for states that are receiving advances to pay benefits, the additional advances and associated interest payments that may result. In addition, as the schedule of state unemployment tax rates that is effective in a year is typically based on the balances in states' accounts in the UTF, states should be mindful that this decision may also impact the schedule of taxes that becomes effective in any given year.

If states charge (or require payment in lieu of contributions) STC benefits, they must apply the provisions of state law for regular UC to all charges (and payment in lieu of contributions).

- D. **Agreement with the Department.** To receive reimbursement pursuant to Section 2108 of the CARES Act, each qualifying state must enter into a new agreement with the Secretary that describes the responsibilities of the parties. The agreement is included as Attachment II of this UIPL. This agreement may be signed by the appropriate state official with authority under state law to enter into an agreement with the Department. The date the agreement is signed does not impact the beginning of the period of time for which reimbursement will be made available, though it does determine when the first payment will be accessible in the

Payment Management System (PMS) for a state's drawdown. Reimbursements are available for weeks of unemployment beginning on or after the date of enactment of the CARES Act (March 27, 2020) or the effective date of a state enactment of an STC program if one did not exist prior to the enactment of the CARES Act and ending on or before December 31, 2020.

Each state entering into an agreement with the Department will receive a Notice of Award (NOA) from the ETA Grant Officer for funding received as reimbursement for eligible STC payments made under state law through the Fiscal Year (FY) 2020 Annual Funding Agreement for the Unemployment Compensation (UC) programs covered under provisions of Subtitle A of Title II of the CARES Act.

States planning to enter into an agreement for reimbursement of state STC benefit costs may contact the appropriate Regional Office to request a copy of the agreement that has been signed by the Assistant Secretary for Employment and Training before obtaining signatures from the appropriate state officials. The agreement signed by both parties must be submitted via email to the following address: COVID-19@dol.gov.

E. Termination of Agreement. Either party, upon 30 days' written notice, may terminate this agreement. The Department also reserves the right to terminate this agreement if it determines that the state does not perform all of the functions and duties under the agreement in accordance with Section 2108 of the CARES Act, the terms of the agreement, operating instructions, and/or guidance issued by the Department. If the agreement is terminated, no federal reimbursement of state STC payment may be made with respect to weeks of unemployment that begin after the date the termination of the agreement is effective. However, federal reimbursement of state STC payments is available with respect to weeks of unemployment ending on or before such termination date.

F. Processing Financial Transactions. Eligible reimbursements for state STC benefit costs under Section 2108 of the CARES Act will be provided to each qualifying state on a monthly basis. At the beginning of each month, estimated state STC benefit payments eligible for reimbursement, taking into account surpluses or shortfalls from prior months' allocations, will be made available in the PMS for state drawdown. After the agreement discussed in subsection E is signed, the first payment will be made available in the PMS in an amount equal to the estimated eligible state STC benefit payments for weeks of unemployment beginning on or after the date of enactment (March 27, 2020) through the month following the month in which this guidance is issued.

Estimates for eligible amounts needed for any month will generally be equal to state STC amounts eligible for reimbursement in the most recent month for which data are reported on the ETA 5159 report, adjusted for any excess or shortfall provided in prior months for which actual data available are above or below that month's allocation. The Grant Officer will assign a separate line on the UC program NOA allowing for issuance of obligational authority for state STC benefit funds, and a separate sub-account for STC will be established in the PMS for states to drawdown reimbursements of state STC benefit funds. This will function identically to benefit funding for Trade Readjustment Assistance and Wage Insurance benefits.

Funds should be withdrawn from the PMS as needed, in compliance with Cash Management Improvement Act of 1990 (CMIA) requirements, to meet state STC benefit expenses. Any deposits to state accounts in the UTF of previously disbursed STC benefits eligible for federal reimbursement should be communicated to the Bureau of Public Debt as a credit to "State UI Withdrawal." An offsetting reduction to "net UI [unemployment insurance] Benefits" reported on the ETA 2112, line 31, column F should accompany such credits. This would effectively reverse the state transactions involving funds previously withdrawn and disbursed for STC benefits.

G. Reporting. The ETA 5159 report for STC has one additional cell that must be reported. This cell describes the number of employers with STC agreements (Section D cell C10, Number of Participating Employers). Enter the total number of employers who have entered into agreements with the state that would provide for potential STC benefit payments to claimants. If a single employer has multiple agreements with the state, or multiple agreements within an establishment, count that employer only once.

Each state recipient of STC reimbursement funding must submit a Quarterly Financial Report (ETA 9130) containing information on obligations and expenditures of such funds.

5. Temporary Federal STC Programs Operated Under Agreement with Secretary. Section 2109 of the CARES Act permits a state that does not have the statutory authority to operate an STC program under its law to enter into an agreement with the Secretary to operate a temporary federal STC program, which provides federal benefits as opposed to state funded benefits, that conforms to the requirements in section 3306(v), FUTA (26 U.S.C. § 3306(v)). An agreement to operate a temporary federal STC program applies to weeks of unemployment beginning on or after the date of the signed agreement. Authority to operate the temporary federal STC program expires on December 31, 2020. The state or the Department may terminate the agreement with 30 days' advance written notice. If an STC program is later implemented under state law, the state will no longer be eligible for reimbursements of benefits paid under the federal STC program with respect to weeks of unemployment beginning after the effective date of the law authorizing the state STC program.

Under the temporary federal program, employer participation is voluntary. Under a temporary federal STC program agreement, STC payments to an individual in a benefit year may not exceed 26 times the amount of regular UC payable for a week of total unemployment to such individual. In addition, an STC plan approved by a state operating a temporary federal STC program cannot provide STC payments to individuals employed on a seasonal, temporary, or intermittent basis.

Employers are required to pay the state an amount equal to one-half of the STC benefits paid to their employees who participate in the temporary federal STC program. The amounts collected from employers under this program must be deposited in the state's unemployment fund and may not be used for calculating the employer's contribution rate. Because this payment by the employer is a reimbursement for federal STC benefits, it may not be credited to the employer's reserve or applied as a voluntary contribution.

The federal government will reimburse the state for the remaining one-half of federal STC benefit costs and for all administrative expenses associated with operating this federal STC program.

Additional guidance providing operating instructions for this program is forthcoming. States interested in operating a temporary STC federal program may contact the appropriate ETA Regional Office to initiate discussions about the requirements.

6. **Grants for State STC Programs.** Section 2110 of the CARES Act provides up to \$100 million for grants to states with STC programs in their laws that conform to the requirements of section 3306(v), FUTA (26 U.S.C. § 3306(v)). Grants are available for the implementation or improved administration of an STC program, and for promotion and enrollment of employers in an STC program. The Secretary may use up to 0.25 percent of the \$100 million to provide outreach and share best practices of STC programs. The deadline to apply for these grants is December 31, 2023.

Each state's share of the STC grants is calculated as provided under Section 2110(b)(1) of the CARES Act:

[To] be equal to the amount obtained by multiplying \$100,000,000 (less the amount used by the Secretary under subsection (e)) by the same ratio as would apply under subsection (a)(2)(B) of section 903 of the Social Security Act (42 U.S.C. 1103) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1) of such section) that would have been subject to transfer to State accounts, as of October 1, 2019, under the provisions of subsection (a) of such section.

This means each state's share is based on its proportionate share of FUTA taxable wages multiplied by the \$100,000,000 (less up to 0.25 percent). Attachment III contains a table of each state's potential share of the STC grant.

One-third of a state's share is available for grants for implementation or improved administration of an STC program. The remaining two-thirds of a state's share is available for grants for the promotion and enrollment of employers in a conforming STC program.

A state whose UC law is not certified under Section 3304, FUTA (26 U.S.C. § 3304), or under Section 303, SSA (42 U.S.C. § 503), is not eligible to receive a grant. Also, to qualify for a grant, a state's STC program may not be subject to discontinuation. If a state has a new STC enactment, it must be effective within 12 months of the date of the Secretary's certification to the Treasury for transfer of grant funds to the state's account in the UTF.

States will be notified within 30 days of receipt of a complete application whether they have been approved for a grant. If approved, the Secretary of Treasury will transfer the grant amount to the state's account in the UTF within seven days of receipt of the Department's certification.

The Secretary will recoup any grant awarded to a state if during the five-year period beginning after the first date a grant was awarded to the state, the state terminates its STC program or fails to meet the requirements regarding the STC program.

Additional guidance about these grants, including the eligibility criteria and application requirements, is forthcoming. States must submit applications to the Secretary at such time and in such manner and form as the Secretary may require. States interested in applying for STC grants may contact the appropriate ETA Regional Office to initiate discussions about the requirements.

7. **Assistance and Guidance in Implementing Programs.** Section 2111 of the CARES Act requires the Secretary to assist states in establishing and implementing STC programs that conform to the requirements of section 3306(v), FUTA (26 U.S.C. § 3306(v)). This includes: 1) developing model legislative language or disseminating existing model legislative language that may be used by states to enact such programs; 2) providing technical assistance and guidance in developing, enacting, and implementing such programs; and 3) establishing reporting requirements for states, including the number of estimated averted layoffs, and the number of participating employers and workers.

This model legislative language and guidance must allow sufficient flexibility by states and participating employers while ensuring accountability and program integrity. In addition, the Secretary must consult with employers, labor organizations, state workforce agencies, and other program experts regarding the model legislative language and guidance if prior model legislative language had not been developed through such a consultative process.

In 2012, the Department developed model legislative language through a consultative process which also satisfies the requirement to issue model legislation in the CARES Act. UIPL No. 22-12 provides information about the Department's consultations with employers, labor organizations, state workforce agencies, and other program experts about STC model legislative language, guidance, and reporting. UIPL No. 22-12, Change 1 provides model legislative language for states to use for their STC programs, which includes some optional provisions that offer states flexibility and an opportunity to improve program integrity. UIPL No. 22-12, Change 2 provides states additional options for their STC programs. States interested in amending their laws to provide for an STC program should review the model legislative language and optional provisions in these UIPLs. Links to these UIPLs are provided in the References section below. In addition, states may contact the appropriate ETA Regional Office to initiate discussions about the requirements of section 3306(v), FUTA, and any additional permissible flexibilities they may be considering for their STC programs.

8. **Inquiries.** States should direct inquiries to COVID-19@dol.gov and copy the appropriate ETA Regional Office.
9. **References.**
 - Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136, including Title II Subtitle A Relief for Workers Affected by Coronavirus Act;

- Families First Coronavirus Response Act, Pub. L. 116-127, including Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA);
- Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96;
- Sections 3303(a), 3306(v), and 3309(a), Federal Unemployment Tax Act (FUTA) (26 U.S.C. §§ 3303, 3306, and 3309);
- Sections 303 and 903(a), Social Security Act (SSA) (42 U.S.C. §§ 503 and 1103);
- Sections 414(i) and (j), Internal Revenue Code (IRC) (26 U.S.C. § 414);
- UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued on April 4, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297;
- UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions Regarding Temporary Emergency State Staffing Flexibility*, issued on April 2, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390;
- UIPL No. 13-20, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020*, issued on March 22, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634;
- UIPL No. 10-20, *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*, issued on March 12, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8893;
- UIPL No. 22-12, Change 2, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*, issued on February 7, 2014, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7832;
- UIPL No. 22-12, Change 1, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*, issued on December 21, 2012, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5754; and
- UIPL No. 22-12, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*, issued on June 18, 2012, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9382.

10. Attachments.

- Attachment I Statutory Language of Title II, Subtitle A, Sections 2108-2111 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act;
- Attachment II Text of Agreement
- Attachment III Grants for STC Programs – Amount