

<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Unemployment Insurance
	<b>CORRESPONDENCE SYMBOL</b> OUI/DL
	<b>DATE</b> June 18, 2012

**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 22-12**

**TO:** STATE WORKFORCE AGENCIES

**FROM:** JANE OATES  
Assistant Secretary

**SUBJECT:** Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012

1. **Purpose.** To provide an overview of all of the provisions in Subtitle D of Title II of the Middle Class Tax Relief and Job Creation Act of 2012 that concern short-time compensation or “worksharing” programs, and to provide guidance to the state agencies about the new definition of short-time compensation in Federal unemployment compensation law, the transition period for states currently administering a short-time compensation program, and 100% Federal reimbursement of certain state short-time compensation benefits.
2. **References.** Section 194 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Public Law (Pub. L.) 97-248); Section 401 of the Unemployment Compensation Amendments of 1992 (Pub. L. 102-318); Title II of the Middle Class Tax Relief and Job Creation Act of 2012, (Pub. L. 112-96), The Layoff Prevention Act of 2012 (Subtitle D of Title II of Pub. L. 112-96); Federal Unemployment Tax Act (FUTA; 26 U.S.C. 3301 et seq.); Section 303(a)(5) of the Social Security Act (SSA); Sections 414(i) and (j) of the Internal Revenue Code (IRC); and Unemployment Insurance Program Letter (UIPL) No. 45-92.
3. **Background.** Short-time compensation (STC), also known as worksharing or shared work programs, preserves employees’ jobs and employers’ trained workforces during disruptions to a 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. STC provides a portion of a weekly unemployment compensation (UC) payment to certain individuals whose workweeks have been reduced. STC cushions the adverse effect of the reduction in business activity on workers and ensures that these workers will be available to resume prior employment levels when business demand increases.

Initially, states were authorized to implement temporary STC programs using funds from their accounts in the Unemployment Trust Fund (UTF) in the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). The Unemployment Compensation Amendments of 1992 (Pub. L. 102-318) added permanent statutory authority for states to fund STC from the UTF and established certain requirements in its definition of an STC program.

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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On February 22, 2012, the President signed into law Pub. L. 112-96, the Middle Class Tax Relief and Job Creation Act of 2012 (the Act), which contains many provisions concerning the UC program. This issuance provides initial guidance on the provisions in Subtitle D of Title II of the Act, the Layoff Prevention Act of 2012 (hereinafter all references to sections are to the Act) pertaining to STC. Subtitle D does the following:

- a. Modifies the definition from that in Pub. L. 102-318 of the term “short-time compensation” by adding a new Section 3306(v), FUTA. States are not required to enact an STC program. However, state STC programs must operate consistent with the provisions in the new subsection (v). Subtitle D also provides a transition period for states with STC laws to conform to the new definition and requirements. (Section 2161)
- b. Provides 100 percent Federal reimbursement of certain STC benefit costs paid by states operating an STC program under their own law consistent with the provisions of Section 3306(v), FUTA, for up to 3 years. Subtitle D also provides a transition period during which states operating STC programs before enactment of Subtitle D may qualify for reimbursement of benefit costs if their laws do not conform to the requirements in Section 3306(v), FUTA. (Section 2162)
- c. Allows states without STC programs meeting the new definition in Section 3306(v) to enter into an agreement with the Secretary of Labor (Secretary) to operate a Federal STC program for up to 2 years, with the state receiving reimbursement for one-half of the amount of STC paid to individuals under the agreement and the employer paying the remaining one-half of STC benefit costs. (Section 2163)
- d. Provides for grants to states for the implementation or improved administration of, or promotion and enrollment in, STC programs meeting the new definition. (Section 2164)
- e. Directs the Secretary, after consultation with stakeholders, to develop model legislative language, guidance, and reporting requirements for use by states in developing and enacting STC programs. (Section 2165)
- f. Requires the Secretary to submit a final report on the implementation of the provisions of Subtitle D no later than 4 years after the date of enactment. (Section 2166)

As required by statute, Section 2165(c), Pub. L. 112-96, the Department of Labor (Department) consulted with employers, labor organizations, state workforce agencies, and other program experts about model legislative language, guidance, and reporting. A Notice of Listening Sessions on Implementation of Unemployment Insurance Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) was published at 77 Federal Register 16074 (March 19, 2012) and two listening sessions were held. Recordings of these sessions are at <https://www.workforce3one.org/view/5001206850055897580/info> and <https://www.workforce3one.org/view/5001206850373490082/info>.

**4. Definition of Short-Time Compensation Program.** The term “short-time compensation” is defined in new subsection (v) of Section 3306, FUTA, which became effective on the date of enactment, February 22, 2012. States are not required to enact an STC program into law; however, states may not operate an STC program that does not conform to this definition, except as provided in Section 2161(a)(3), which is discussed further in section 5 of this guidance. A short description of the elements of this definition in each numbered paragraph of Section 3306(v), FUTA, and how they compare to the elements of the prior definition of “short-time compensation” in Federal law is provided below.

a. *“(1) the participation of an employer is voluntary;”*

This is the same as prior law. Employer participation has always been voluntary in STC programs.

b. *“(2) an employer reduces the number of hours worked by employees in lieu of layoffs;”*

This is a modification from the prior definition. Previously, the STC definition required a reduction in hours worked by employees in lieu of temporary layoffs. The removal of the word temporary may enable a state UC agency to approve more applications by employers to participate in an STC program since the employer is no longer required to reasonably expect that the layoff be temporary. The use of the word “layoffs” means that the employing unit affected must consist of at least two workers.

c. *“(3) such employees whose workweeks 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 more than 60 percent), are not disqualified from unemployment compensation;”*

This is a modification from prior law.

Consistent with prior law, employees participating in STC must not be disqualified from UC on account of their STC participation.

However, prior law required a reduction in the workweek of at least 10 percent. No maximum percentage was provided under the prior law. Federal law now establishes both a minimum (10 percent) and maximum (60 percent) percentage by which individuals’ workweeks may be reduced. The states may determine the range as long as it falls within those parameters.

d. *“(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would otherwise be payable to the employee if such employee were unemployed;”*

This is the same as prior law. STC weekly benefit amounts have always been defined

as a proportion of the UC weekly benefit amount payable for a week of total unemployment equivalent to the proportion of the workweek that had been reduced. Thus, individuals must be monetarily eligible for UC and have remaining entitlement to UC in order to receive an STC weekly benefit amount.

- e. *“(5) such employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency;”*

This is the same as prior law.

- f. *“(6) eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Investment Act of 1998) to enhance job skills if such program has been approved by the State agency;”*

This is an expansion of the requirement in prior law because it permits the state UC agency to approve STC plans providing for both employer-sponsored training and Workforce Investment Act (WIA) training to improve job skills. Previously, only employer-sponsored training could be included in an STC plan. The addition of WIA training should provide more training opportunities to STC participants. As under previous law, any training must be approved by the state agency.

- g. *“(7) the State agency shall require employers to certify that if the employer provides health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) or contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program;”*

This is a new requirement, although many states already have STC laws that contain similar provisions. The employer may not reduce the health or specified retirement benefits to individuals participating in the STC program. However, this prohibition on reductions does not apply if a reduction (described in more detail below) in such health and specified retirement benefits also apply to employees not participating in STC.

*Health Benefits.* As part of any application to participate in a STC program, an employer that provides health benefits to an employee who has a reduced workweek under the employer’s STC plan must certify that such benefits will continue to be provided to the employee under the same terms and conditions as though the employee’s workweek were not reduced.

For purposes of this certification, employees participating in the employer’s STC plan must be allowed to maintain coverage under the same terms and conditions as

employees not participating in the STC plan. If coverage under the group health plan requires employee contributions, employees who participate in the STC plan may still be required to make such contributions in order to maintain their coverage. Notwithstanding the above, a change in health benefits applicable to employees who are not participating in the STC plan may also apply to employees who participate in the STC plan.

*Retirement Plans.* As part of any application to participate in a STC program, an employer that maintains a retirement plan (either a defined benefit plan or a defined contribution plan) for an employee who has a reduced workweek under the employer's proposed plan must certify that benefits (in the case of a defined benefit plan) and contributions (in the case of a defined contribution plan) will continue to be provided to the employee under the same terms and conditions as though the employee's workweek were not reduced.

For purposes of this certification, employees participating in the employer's STC plan must be allowed to maintain coverage in the retirement plan under the same terms and conditions as employees not participating in the STC plan. The hours that were reduced under the STC plan must be credited for purposes of participation, vesting, and accrual of benefits as though the workweek had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation. Notwithstanding the above, a reduction in benefits under a defined benefit plan or a reduction in contributions under a defined contribution plan, applicable to employees who are not participating in the STC program may also apply to employees who participate in the employer's STC plan.

- h. *“(8) the State agency shall require an employer to submit a written plan describing the manner in which the requirements of this subsection will be implemented (including a plan for giving notice, where feasible, to an employee whose workweek is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation and such other information as the Secretary of Labor determines is appropriate;”*

This is a new requirement, although state laws generally require employers to submit an application to participate in the STC program. However the requirement that the state law specify that any STC application will require the employer to specify how the plan meets the new requirements of Section 3306(v), FUTA, is generally new for states. Of particular note, the plan will have to specify how workers will be notified of the STC plan in advance, if feasible, and provide an estimate of the number of workers who would be laid off if the employer does not participate in STC. If advance notice is not feasible, the Department requires that the application explain why it is not feasible. If the affected unit is covered by a collective bargaining agreement, it will be sufficient to provide an explanation in the application of how notification to the bargaining agent will be provided.

- i. *“(9) the terms of the employer's written plan and implementation shall be consistent*

*with employer obligations under applicable Federal and State laws; ...”*

This is a new requirement. Now, state STC law must require the employer to attest, as part of its STC application, that participation in the STC program is consistent with the employer’s obligations under state and Federal law.

- j. *“(10) upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program.”*

This is a new provision intended to give states the flexibility to include, upon state request and approval by the Secretary, additional STC requirements. Many state STC laws currently contain additional requirements for employer or employee participation in the STC program. We will issue additional guidance explaining the process by which states may request that the Secretary approve any additional provisions other than those specifically included in Section 3306(v), FUTA.

- 5. **Transition Period for State STC Laws to Conform to New Definition.** While the new definition of STC in Section 3306(v), FUTA, became effective on February 22, 2012, Section 2161(a)(3) provides for a transition period for states administering STC programs on that date. The term “administering” means the state’s STC law is in effect, and the state agency responsible for administering the STC program has established operating guidelines and has informed employers and workers about the STC program, regardless of whether any STC payments have been made. If a state’s law cannot be administered consistent with this new definition, the state may continue to administer its current STC law until the earlier of the effective date of state law changes conforming to this new STC definition or the “date that is 2 years and 6 months after the date of the enactment of this Act,” August 22, 2014.

Thus, if any state that had not been administering an STC program on February 22, 2012, enacts a law providing for an STC program after that date, the enactment must conform to the definition in Section 3306(v), FUTA. In addition, a state administering a non-conforming STC program on February 22, 2012, must amend its law to conform to Section 3306(v), FUTA, effective no later than August 22, 2014, in order to continue operating its STC program after that date.

- 6. **Temporary Reimbursement of Eligible STC Costs Paid Under State Law.**

- a. **In General.** Section 2162 provides for Federal reimbursement of state STC benefit costs. Reimbursement is available for up to 156 weeks to states whose STC laws conform to the definition in Section 3306(v), FUTA. States with current STC laws that do not conform to this definition may get reimbursement only during the two and one-half year transition period (130 weeks) discussed in subsection b below. Reimbursements are available for weeks of unemployment beginning after the date of enactment (in most states, the week beginning February 26, 2012) until the week of unemployment ending on or before the date that is 3 years and 6 months after the date of enactment, August 22, 2015 (in most states, the week of unemployment ending August 22, 2015).

In order to qualify for reimbursement of STC costs paid under state law, the state's STC provisions are not required to be permanent. However, in order to qualify for a grant, as explained in section 9 below, a state's STC law may not be subject to discontinuation.

- b. Transition Period for States Administering State STC Laws on the Date of Enactment. For states whose laws do not conform to Section 3306(v), Federal reimbursement is available if their STC programs had been administered on or before February 22, 2012. Reimbursement is available during the transition period described in section 5 above (up to 2 years and 6 months—in most states, until the week of unemployment ending on August 23, 2014). If at any point during the transition period the state enacts conforming legislation, it then becomes eligible for the full 156 weeks of reimbursement available until August 22, 2015. For weeks of unemployment beginning after August 22, 2014 (in most states, the week beginning August 24, 2014), there will be no reimbursement of STC costs if a state law does not conform to Section 3306(v), FUTA.
- c. States Transitioning from Operating a Federal STC Program Under Agreement with the Secretary to a State STC Program Eligible for 100 percent Reimbursement. Section 2163 provides 50 percent Federal reimbursement of STC benefit costs for states paying Federal STC benefits under an agreement with the Secretary. (See section 8 of this UIPL.) Any state that operated a Federal STC program under an agreement and transitions to a state STC program may receive the 100 percent reimbursement for state STC benefits paid with respect to weeks of unemployment beginning after the effective date of a new state STC law conforming to Section 3306(v). However, the combined number of weeks of reimbursement under Section 2163 and Section 2162 may not exceed 156.
- d. Limitations on Reimbursement. The statute establishes 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) for a week of total unemployment. Second, no reimbursement will be made for payment of STC to an individual 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 employed on a part-time basis whose hours are reduced under an STC plan.

If state law does not include definitions of these terms, states will use the following for determining which state STC benefits are subject to 100 percent Federal reimbursement:

*Seasonal Employment:* Employment with an employer who 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 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.

*Temporary Employment:* Employment where 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 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.

- e. Charging of STC Benefits. Federal law permits states to reduce employers' state unemployment tax rates from a "standard" rate only on the basis of their "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk ...." (Section 3303(a), FUTA). As states generally measure employers' experience with unemployment via UC payments made to their former employees, states charge UC benefits, which includes STC, to employers' accounts when unemployment is in the direct or indirect control of employer, or when the unemployment is due to general economic, trade, or other business reasons. Similarly, Federal law provides that employers who opt to reimburse UC benefits, which includes STC, rather than pay experience-rated state unemployment taxes, must reimburse "the amounts of compensation attributable under the State law to such service" (Section 3309(a)(2), FUTA). Therefore, the Department requires states to require reimbursing employers to reimburse the STC costs attributable to the service for these employers.

The intent of the "experience rating" requirement in Federal law is to equitably allocate the cost of UC among employers, with employers who cause more unemployment generally paying higher state unemployment taxes than employers who cause less unemployment. Even though employers participating in STC programs under section 2162 of the Act are directly causing unemployment (or STC payments are attributable to service with the employer) by reducing the hours their employees work, because the associated UC costs are being reimbursed by the Federal government by an amount equal to 100 percent of the amount of STC paid to participating employees, states may (if permissible under state law) choose not to charge (or not to require reimbursement of) STC payments that are subject to the 100 percent reimbursement by the Federal government. States choosing to charge (or require reimbursement of) the benefits may not, however, apply special rules to these STC payments, but must follow the provisions of state law applying to all charges (and reimbursements) for STC payments. When the 100 percent Federal reimbursement ends, states must again apply their charging provisions to STC payments.

As a reminder, if a state permits payment 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, those STC payments will not be reimbursed. Accordingly, the state must charge the employer for these benefits (or require reimbursement) consistent with state law.



Further, all STC payments made by a state for a week of unemployment for which 100 percent Federal reimbursement is not made must also be charged (or reimbursed) consistent with state law.

When considering whether or not to relieve employers from charging (or reimbursement) 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.

- f. Agreements. In order to receive reimbursement for eligible STC payments made under state law, each state that may qualify for reimbursement must enter into an agreement with the Secretary that describes the responsibilities of the parties consistent with Section 2162 and includes a description of the estimation methodology that will be used to provide funds to states at the beginning of each month (see Attachment II). This agreement may be signed by the Administrator of the state agency responsible for administering the state UC program, if the Administrator has the authority under state law to do so.

Each potentially qualifying state must also sign an addendum to the Fiscal Year 2012 Annual Funding Agreement for the UI Program (see Attachment III). This addendum is also applicable to other UI-related provisions in Pub. L.112-96. The addendum must be signed by the governor of the state, or the governor's designee.

States planning to enter into agreements for reimbursement of state STC benefit costs should contact the appropriate Regional Office to request copies of these agreements that have been signed by the Secretary before getting signatures from the appropriate state officials. Both signed agreements must be submitted via email to the following address: [STC\\_Applications@dol.gov](mailto:STC_Applications@dol.gov).

- g. Financial Information: Payments to States for State STC Benefit. Section 2162 provides for 100 percent Federal reimbursement of the amount of STC paid to individuals under state STC laws, subject to the limitations in subsection d. above. Eligible reimbursements for state STC benefit costs 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 Payment Management System (PMS) for state drawdown. Funds drawn down must be deposited into a state's account in the UTF or Benefit Payment Account where Cash Management Improvement Act of 1990 (CMIA) requirements apply. After the agreements cited in subsection f. are 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 after the date of enactment 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 is reported on the ETA 2112 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 notices 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 draw down 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 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.

## 7. **Reporting.**

- a. ETA 2112. (OMB No. 1205-0154). Transactions involving STC benefits reimbursed with Federal funds must be reported in the aggregate on the electronic ETA 2112 report. Information reflecting these STC transactions must be reported as follows:
  - 1) **Line 23b, Short-Time Compensation - Federal.** Report on line 23b, column F the amount of Federally reimbursed STC funds deposited into the state's benefit payment account.
  - 2) **Line 31, Net UI Benefits.** Line 31 should exclude all state STC benefit payments paid for using Federal funds. When STC payments issued in previous months are reimbursed with Federal funds, the amount of Federal reimbursement should be netted out of line 31. STC benefits paid for using regular state UTF funds should continue to be included on line 31.
  - 3) **Line 42b, Short-Time Compensation - Federal.** Report on line 42b, column F the net amount of state STC benefits paid that are eligible for Federal reimbursement. States are to report gross STC benefit disbursements in column F regardless of whether amounts of Federal tax withholdings are applied to STC benefit payments.
- b. ETA 5159. (OMB No. 1205-0010). The STC-specific report form for the ETA 5159 has one additional cell that must be reported. This cell describes the number of employers with STC agreements.

- 1) **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.

8. **Temporary Federal STC Programs Operated Under Agreement with Secretary.** Section 2163 permits a state to enter into an agreement with the Secretary to operate a Federal STC program. The payment of STC under this provision is not based on state UC law but upon an agreement with the Secretary, similar to how states pay Emergency Unemployment Compensation. This allows a state's employers and workers to benefit from an STC program even if that state's law does not presently provide for the payment of STC. Below is a brief summary of the applicable statutory requirements. Additional guidance on this provision is forthcoming.

The authority for a state to enter into an agreement with the Secretary to pay Federal STC expires no later than "the date that is 2 years and 13 weeks after the date of enactment of this Act," that is, May 24, 2014. States may pay STC benefits under this temporary Federal program for no more than 104 weeks. As noted above in section 6(c), states are permitted to be reimbursed for state STC costs for up to 156 weeks. However, it is important to note that the number of weeks that a state pays Federal STC benefits will result in a reduction in the total number of weeks the state may receive reimbursement for STC payments made under its state law. Thus, if the state pays Federal STC by agreement for 20 weeks, and subsequently enacts an STC law meeting the requirements of Section 3306(v), FUTA, the 20 weeks of Federal STC paid through agreement is deducted from the maximum of 156 weeks of 100 percent reimbursement of state STC costs.

While it is voluntary for a state to operate it, a state's temporary Federal STC program must conform to the definition of an STC program in Section 3306(v), FUTA. The state or the Department may terminate the agreement with 30 days' advance written notice.

Under the temporary Federal program, STC payments to an individual in a benefit year may not exceed 26 times the amount of regular UC payable to such individual for a week of total unemployment. In addition, states may not pay STC to individuals employed on a seasonal, temporary, or intermittent basis.

Employers must pay one-half of the benefit costs of an employee participating in the temporary Federal STC program. Amounts collected from employers under this provision must be deposited in the state's unemployment fund and may not be used for calculating the employer's contribution rate. Section 2163(b)(3) requires employers to reimburse the state for one-half of these STC costs, and provides that the reimbursement "shall be deposited in the State's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate [that is, experience rate]" under section 3303(a)(1), FUTA. Accordingly, this payment by the employer is a reimbursement for Federal STC benefits and may not be credited to the employers' 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 administrative expenses associated with operating this Federal STC program under

the Annual Funding Agreement Addendum.

- 9. Availability of and Criteria for Grants for State STC Programs.** Grants for the implementation or improved administration of an STC program, or for promotion and enrollment of employers in an STC program are available under Section 2164. Below is a brief summary of the applicable statutory requirements. Additional guidance on this issue is forthcoming.

Section 2164 authorizes a total of 100 million dollars (less a reduction of 0.25 percent that the Secretary may use to provide outreach and share best practices of STC programs) for these grants. A state's share will be determined using the same ratio as would apply under a Reed Act distribution that would have been made October 1, 2010, under Section 903(a)(2)(B), SSA. This means each state's share is based on its proportionate share of FUTA taxable wages multiplied by the \$100,000,000 (less 0.25 percent). 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. The Department will issue additional guidance about these grants, including the eligibility criteria for the two-thirds' share grants. The deadline to apply for this grant is December 31, 2014.

Only states that have STC laws conforming to Section 3306(v), FUTA, may be approved for these grants. Any state whose law is not certified under Section 3304, FUTA, or under Section 303, SSA, is not eligible to receive a grant. In addition, 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.

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 after the award, the state terminates its STC program or otherwise fails to meet the Federal STC requirements.

- 10. Model Legislation.** Section 2165 requires the Secretary to develop model legislative language and guidance for use by the states in developing and enacting STC programs. Based on the feedback received during the consultation described in section 3. above, the Department is drafting the model legislative language, which will be provided in subsequent guidance.
- 11. STC Study.** Section 2166 requires the Secretary to report to Congress and the President on the implementation of these provisions by February 22, 2016. The report must include a description of best practices by states and employers in the administration, promotion and use of STC; an analysis of significant challenges to the enactment and implementation of STC programs; and a survey of employers in all states to determine the level of interest in STC programs. The Department expects to work with states to carry out these activities.

**12. Action Requested.** Administrators are requested to provide this guidance to the appropriate staff.

**13. Inquiries.** Questions should be directed to the appropriate Regional Office.

**14. Attachments.**

Attachment I: Text of Subtitle D – Short-Time Compensation Program

Attachment II: Text of Agreement

Attachment III: Addendum to FY2012 Annual Funding Agreement for Unemployment Insurance (UI) Program

Attachment IV: Grants For STC Programs – Amounts