

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI-STC
	CORRESPONDENCE SYMBOL OUI/DL
	DATE December 21, 2012

**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 22-12,
CHANGE 1**

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

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

1. **Purpose.** To provide model legislation for states to use in implementing the provisions in Subtitle D of Title II of the Middle Class Tax Relief and Job Creation Act of 2012 on short-time compensation or “worksharing” programs, and to provide additional guidance to the state agencies about the new definition of short-time compensation in Federal unemployment compensation law.

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);
 - The Layoff Prevention Act of 2012 (Subtitle D) Title II of the Middle Class Tax Relief and Job Creation Act of 2012, (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. *Unemployment Compensation Amendments of 1992 (P.L. 102-318) - Provisions Affecting the Federal-State Unemployment Compensation (UC) Program;*
 - UIPL No. 22-12. *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*

3. **Background.** Short-time compensation (STC), also known as work-sharing or shared work programs, preserves employees’ jobs and employers’ trained workforces from 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 their regular work schedule. STC provides a portion of a weekly unemployment compensation (UC) payment to certain individuals whose work weeks have been reduced. STC cushions the adverse effect of the reduction in business activity on workers and ensures that these

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workers will be available to resume prior employment levels when business demand increases.

Initially, the TEFRA of 1982 authorized states to implement temporary STC programs using funds from their accounts in the Unemployment Trust Fund (UTF). In UIPL No. 39-83, the Department of Labor (Department) issued model legislation to the states to implement these temporary STC programs. This UIPL expired on September 30, 1985. The Unemployment Compensation Amendments of 1992 added permanent statutory authority for states to fund STC from their accounts in the UTF and established certain requirements in its definition of an STC program.

On February 22, 2012, the President signed into law the Middle Class Tax Relief and Job Creation Act of 2012 (the Act), which contains many provisions concerning the UC program. In UIPL No. 22-12, the Department provided guidance to states about the minimum conformity requirements for the new definition of STC in the Act. Section 2165 of the Act also required the Secretary of Labor, after consultation with stakeholders, to develop model legislation, guidance, and reporting requirements for use by states in developing and enacting STC programs.

As required by Section 2165(c) of the Act, the 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. The Listening Sessions.** In these sessions, the Department explained that the term “short-time compensation” is defined in new subsection (v) of Section 3306, FUTA, which became effective on the date of enactment of the Act, February 22, 2012. States are not required to enact an STC program into law; however, states enacting a new STC law may not operate an STC program that does not conform to this definition. The Act provides states with current STC laws a transitional period to conform to the new requirements, which is discussed in UIPL No. 22-12. Section 3306(v)(10), FUTA, provides that “upon request by the State and approval by the Secretary of Labor” additional provisions may be included in a State STC law if these are “determined to be appropriate for purposes of a short-time compensation program.”

During the listening sessions, some stakeholders expressed the opinion that the model language should be limited to that which is necessary to conform to the new definition and that no other requirements be included in the model legislation. Some states have STC laws that have been in place since the 1980s, and expressed an interest in keeping the model language as consistent with the model language in UIPL No. 39-83 as the new definition of Section 3306(v), FUTA, would allow. Some states inquired about the approval process

provided in Section 3306(v)(10), FUTA, if their current law contained additional provisions beyond the minimum conformity requirements.

- 5. The Model Legislation.** The Department agrees with the stakeholders that the model legislation should be limited to what is necessary to conform to the new definition of an STC program. The Department also agrees that the model legislation be tailored in such a way that those states that currently have STC laws based on the 1983 guidance should not be required to amend their STC laws if these laws are appropriate for an STC program that meets the definition in Section 3306(v), FUTA. Therefore, the Department has developed model language based upon the 1983 model language that has been updated and revised to assist states in enacting conforming legislation. States are not required to use the model language but if a state enacts a law using the model language provided it will be in conformity with the new definition of a short-time compensation program in Section 3306(v), FUTA.

As noted above, several states have operated STC programs since the 1980's consistent with the previous model language. These state laws may contain additional provisions for an STC program other than the provisions necessary to conform to the new definition of an STC program. These additional provisions concern the size of the affected unit in an STC program; limitations on participation in the STC program by employers who are either maximum rated employers in the state experience rating system or delinquent in the payment of contributions, penalties or interest; or include a requirement that, if the affected unit is covered under a collective bargaining agreement, the bargaining agent must agree to the plan. These provisions were recommended in the previous model language and were not addressed in the Act. The Department considers these provisions appropriate for the operation of an STC program, and a state law containing these optional provisions will be in conformity with the new definition of an STC program. The approval of these provisions is made under the Secretary's authority under Section 3306(v)(10), FUTA, to permit such additional provisions that are appropriate for an STC program. The model language clearly identifies these as optional provisions should a state wish to include them in any new enactment, or if a state currently has these provisions in its STC law.

- 6. Approval of other additional provisions not included in model language that a state wishes to be considered appropriate for an STC program.** Section 3306(v)(10), FUTA, provides flexibility to states to request approval by the Secretary of Labor of other provisions that a state wishes to be considered appropriate for an STC program. This UIPL details the procedure for a state with an additional provision[s] in its STC law, or a state developing legislation to enact a new STC law that wishes to add such an additional provision in its STC law, to request approval by the Secretary of Labor. We strongly encourage states to consult with the Department before enacting any optional provisions other than those identified in the model legislation. Any additional provision must be consistent with how an STC program is defined in Sections 3306(v)(1) through (9), FUTA.

An authorized representative of the state (normally this would be the Administrator of the State Agency) must request, in writing, that the Department approve any additional optional provisions as appropriate for a STC program.

Any request to approve an additional provision a state considers appropriate for a STC program must include the text of the additional provision; a citation where the state proposes to codify the additional provision in its state law; a description of the provision and a detailed rationale as to why the state considers the provision appropriate for a STC program; and a request that the Department approve the provision.

The request must be addressed to:

Gay Gilbert
Administrator
Office of Unemployment Insurance
200 Constitution Ave N.W. Room S-4524
Washington, D.C., 20210

A PDF of the request may also be sent electronically to:

STC_Applications@dol.gov

7. **Action Requested.** State Administrators are requested to provide this information to appropriate staff.
8. **Inquiries.** Inquiries should be directed to the appropriate regional office.
9. **Attachment.** Draft Language and Commentary to Implement a Short-Time Compensation Program.