

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI - STC
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 27-12

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Short-Time Compensation Grant Funding

1. Purpose. To invite states to apply for grant funds for Short-Time Compensation (STC) programs and issue guidance on the process to apply for these grants provided for under Section 2164 of the Middle Class Tax Relief and Job Creation Act of 2012 (Act), which supports the Secretary of Labor's (Secretary) commitment to help employers and workers avert layoffs.

2. References.

- Title II of the Middle Class Tax Relief and Job Creation Act of 2012 (Act), (Public Law (Pub. L.) 112-96), the Layoff Prevention Act of 2012 (Subtitle D of Title II of the Act, sections 2160 – 2166);
- Section 3304(a)(5), Federal Unemployment Tax Act (FUTA);
- Section 3306(v), FUTA;
- Section 303(a)(6), Social Security Act (SSA);
- 20 CFR Part 665, subpart C- Rapid Response Activities;
- Unemployment Insurance Program Letter (UIPL) No. 22-12, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*;
- UIPL No. 12-01, *Outsourcing of Unemployment Compensation Administrative Functions*, and UIPL No. 12-01, Change 1;
- Training and Employment Guidance Letter (TEGL) No. 12-09, *Joint Guidance for States Seeking to Implement Subsidized Work-Based Training Programs for Unemployed Workers*; and
- TEGL No. 30-09, *Layoff Aversion Definition and the Appropriate Use of Workforce Investment Act Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver*.

3. Background. STC programs help employers avert layoffs through the reduction of work hours for an entire group of employees rather than layoff some while others continue working full time. STC provides a portion of a weekly unemployment insurance (UI) payment to those eligible individuals whose workweeks have been reduced.

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States are not required to enact an STC program into law; however, states may not operate an STC program that does not conform to the definition in Section 3306(v) of the FUTA, except temporarily, as provided under Section 2161(a)(3) of the Act. STC allows employers with a state-approved STC plan to reduce the hours of their employees in lieu of layoffs, while permitting these employees to receive compensation for partial unemployment. These employees benefit from the program because they do not suffer a complete loss of employment and they are paid STC when their hours are reduced. Employers benefit from the program because they are able to reduce labor costs temporarily while still maintaining their skilled workforce. In this way, STC protects employer investments in recruiting and training.

As stated above, Section 2164 of the Act provides for grants to states for STC program activities. States may apply for one or both of the following two types of funding:

- (1) A grant to implement or improve a state STC program; and
- (2) A grant to promote and enroll employers in the STC program.

To qualify for an STC grant, the state must meet the following two criteria:

- (1) The state has an STC law that conforms to Section 3306(v), FUTA; and
- (2) The state STC program is not subject to discontinuation.

States that pass STC laws after the effective date of the Act must meet one additional criterion. The state STC program must be scheduled to take effect within 12 months of the date of the Secretary's certification to the U.S. Department of Treasury (Treasury) to permit a transfer of funds for the STC grant award.

The U.S. Department of Labor (Department) strongly encourages eligible states (i.e., states meeting the criteria, listed above) to submit STC grant applications to implement new, or improve existing, STC programs. The STC grant application must be consistent with Section 2164 and this guidance. Section 2164(a)(3)(A) of the Act directs the Secretary to develop eligibility criteria for these grants and this guidance sets forth these criteria. The Department has developed an STC application checklist to help states develop their applications, and encourages states to use the checklist (Attachment II) to ensure their STC grant applications are complete when they submit them to the Department.

Note: Section 7 below describes some of the uses for the two types of STC grant funds that are provided for in Section 2164(d) of the Act, which states that STC grant funds “shall be used for the implementation of short-time compensation programs and the overall administration of such programs and the promotion and enrollment efforts associated with such programs, such as through—

- (1) The creation and support of Rapid Response teams to advise employers about alternatives to layoffs;
- (2) The provision of education or assistance to employers to enable them to assess the feasibility of participating in short-time compensation programs; and
- (3) The development or enhancement of systems to automate—
 - (A) The submission and approval of plans; and
 - (B) The filing and approval of new and ongoing short-time compensation claims.”

In developing an STC grant application, the Department strongly encourages state UI agencies to partner with Workforce Investment Act (WIA) Rapid Response teams because there is a shared goal of layoff aversion and there is an opportunity to leverage resources.

4. STC Grant Funds. The amount of STC grant funds available and the purpose of these funds are described below. A copy of the state STC law, which must conform to Section 3306(v), FUTA, must be included with the state grant application and submitted by the state Administrator responsible for administration of the state's UI law. The Department will, as required by Section 2164(c)(2) of the Act, notify the state of its approval or denial of the grant application within 30 days after receiving such application. The Department will reject incomplete applications. States may resubmit their applications at any time up to December 31, 2014.

A. Available Amounts and Uses of STC Grants. The total amount available in grant funds is \$99,750,000. The maximum amount available to each state is the ratio of FUTA taxable wages paid by employers in a state during Calendar Year (CY) 2009 to the total of FUTA taxable wages paid nationally during CY 2009 multiplied by \$99,750,000 (see Attachment IV). As noted above, states may apply for one or two STC grants. Of the total amount available to each state, the following conditions apply:

1. One-third of the total STC grant funds available to the state are for implementation or improved administration of the STC program; and
2. Two-thirds of the total STC grant funds available to the state are for promotion of the STC program and enrollment of employers in the program.

Note: If a state applies for both of these grants, the state must track and account for each grant separately as described in section 6 of this UIPL.

B. Limitation on the Use of Grant Funds. If a state's STC grant application is approved, the funds may only be used to support those specific activities that were proposed in the approved STC grant application.

If a state wants to expand or modify the approved STC grant statement of work, the state must submit a request for modification through the appropriate Regional Office. STC grants are not available to states that do not meet the requirements outlined in Section 7 below related to the grant application and to Section 3306(v), FUTA.

5. STC Staffing Guidelines. Federal laws and regulations governing UI require that services be administered by "government" personnel. This merit staffing requirement for the UI program is established in Section 303(a)(1), SSA. This section conditions a state's receipt of a UI administrative grant on the state law providing for "[s]uch methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis...) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." This means that state activities supporting the administration of the UI program that are inherently governmental

functions must be merit-staffed. See UIPL No. 12-01, Outsourcing of Unemployment Compensation Administrative Functions, and UIPL No. 12-01, Change 1.

6. STC Program Required Reporting. Section 303(a)(6) of the SSA requires states, as a condition for receiving administrative grants, to provide reports to the Secretary. Also, Section 2164(h) of the Act allows the Secretary to establish reporting requirements for states receiving an STC grant in order to provide oversight of grant funds. As a condition of receiving an STC grant(s), the state must adhere to the new reporting requirements as described in this section.

Attachments II and III to this UIPL have been approved as an Information Collection Request (ICR) by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (OMB No. 1205-0499, which expires December 31, 2012). The Department is currently seeking public comment on this collection and developing materials to extend this collection through 2015.

States that receive STC grants must submit an STC Grant Quarterly Progress Report (QPR) (Attachment III). The STC Grant QPR's purpose is to track STC grant activities and ensure that the state achieves the goals set forth in the STC grant application. The STC Grant QPR has five sections for states to document quarterly STC grant activities: implementation and/or improved administration, promotion and enrollment, outcomes (i.e., the number of averted layoffs, number of reduced hours, UI payments by sector/firm/size, etc.), success stories, and technical assistance needs. Regional Offices will monitor the state's quarterly progress using the STC Grant QPR and match it against the timeline submitted in the STC grant application. The report is due 45 days after the quarter ends (i.e., November 14, February 14, May 15, and August 14). If a state fails to submit the STC Grant QPR and/or is not meeting the timeline established for STC grant implementation as approved in the application, the STC grant may be subject to recoupment as described in Section 10 of this UIPL.

For states with approved STC grant applications, subaccounts will be established in each state's Unemployment Trust Fund (UTF) account for each type of grant, which must be used only for the purpose outlined in the grant application. After the Department provides certification of the approved grant(s) and the amount of the grant(s) to the Treasury Department, Treasury will transfer the appropriate amount(s) to the subaccounts. States will be advised of the total STC grant award(s) and the amount(s) awarded along with the purpose of the grant(s) through an award letter from the Department. After the award(s), the following reports will be required for all STC transactions involving UTF subaccounts:

- A. ETA 8403 (Summary of Financial Transaction, Title IX Funds, OMB No. 1205-0154); and
- B. ETA 2112 (UI Financial Transaction Summary, OMB No. 1205-0154) on lines 15 (Title IX or Special Legislation) and 44 (Title IX or Special Legislation), and the transactions should be identified by amount and program type, as appropriate, in the comments section.

7. STC Grant Application Requirements. Section 2164(c)(1) of the Act requires a state seeking an STC grant under Section 2164(a)(1) and (2) to submit an STC application that meets the requirements set forth by the Department. The Department encourages eligible states to

submit an STC grant application. As stated above, states may apply for either one or both of the following two types of funding:

- (1) A grant to implement or improve a state STC program; and
- (2) A grant to promote and enroll employers in the STC program.

STC grant(s) applications must be complete and submitted by December 31, 2014. To be complete, applications must provide the following:

1. A copy of the state STC law along with the state's explanation of how the law conforms to Section 3306(v), FUTA.
2. If the state is applying for a grant to implement or improve a state STC program, the state must submit a narrative description of the grant/funding request and a detailed project plan with a quarterly timeline for the implementation/improvement activities for the STC program. The project plan must include:
 - a. A description of the infrastructure (i.e., information technology system(s) and operational upgrades) needed to automate the submission and approval of STC employer plans and the filing and approval of initial and continued STC claims; and/or
 - b. A description of any plans to hire and/or train STC staff for STC program implementation.
3. If the state is applying for a grant to promote and enroll employers in the STC program, the state must submit a narrative description of the grant/funding request and a detailed project plan with a quarterly timeline for promotion and enrollment activities for the STC program. The project plan must include:
 - a. The creation and ongoing support of Rapid Response teams to advise employers about alternatives to layoffs;
 - b. The provision of education or assistance to employers to enable them to participate in the STC program; and/or
 - c. STC program outreach tools.
4. A description of the state's quarterly and cumulative goals and desired outcomes for the STC program may include but is not limited to:
 - a. Outreach efforts and partnerships established to increase employer STC program awareness (i.e., Labor Organizations, Rapid Response teams, and workforce system Business Services Representatives);
 - b. Employers educated and/or contacted about the STC program;
 - c. UI and workforce system staff training for STC program activities;
 - d. STC employer plans established; and
 - e. The number of anticipated layoffs averted.

5. An assurance that the state will expend the awarded funds in accordance with the requirements of the STC grant(s).
6. An assurance that the state will submit required reports on STC activities.
7. Description (or copy) of the written agreement or Memorandum of Understanding (MOU) between the UI agency and appropriate workforce system partners: WIA Rapid Response, Workforce System Business Service Representatives, and State/Local Workforce Investment Area(s) to develop a coordinated plan to avert layoffs.
8. An assurance that the state will recover any STC overpayments in accordance with the state UI law.
9. An assurance that the state will develop processes for auditing and monitoring STC employers' adherence to the state-approved STC employer plan and STC payments.
10. A description of how the state will sustain the STC grant(s) activities. The plan may include leveraging WIA Rapid Response grant funds to support promotion and enrollment activities to encourage employers to participate in the STC program.
11. An STC grant application (i.e., cover letter) signed and dated by the state Administrator, and
12. The name, telephone number, and e-mail address of the state STC program contact.

An STC grant application must address all the requirements outlined above and be submitted on or before December 31, 2014. To help states develop their applications, a checklist is attached (Attachment II).

8. STC Grant Application Process. Section 2164(c)(2) of the Act requires the Secretary to award a grant within 30 days from the date a complete application is received and to notify the state of the approval or denial of the application. The 30-day period begins on the day following actual receipt of a complete application.

The grant application must be submitted by the state workforce agency Administrator. Applications must be addressed to:

Gay M. Gilbert, Administrator
Office of Unemployment Insurance
U.S. Department of Labor
200 Constitution Ave, NW
Room S4524
Washington, D.C. 20210

Applications sent only by the U.S. Postal Service may be delayed due to security precautions with mail coming into the Department. Therefore, the Department strongly encourages states to submit applications by e-mail (with PDF attachments), followed by a hard copy to the address

above. Delivery may also be made by the U.S. Postal Service or private companies such as Federal Express or United Parcel Service. States may fax applications to the fax number (202) 693-2874 to the attention of the Division of Unemployment Insurance Operations. E-mail submissions should be sent to the following e-mail address: STC.Applications@dol.gov. Copies should be provided to the appropriate Regional Office. For the purposes of determining the date of receipt, the date the application is received in the National Office will be used. All state applications and the Secretary's approval will be posted on the Department's [Web site](#) relating to the Act.

9. Agreements. States with an approved STC application must sign an addendum to the Fiscal Year 2012 Annual Funding Agreement for the UI Program (see UIPL No. 22-12 Attachment III) to receive STC grant funds. This addendum is also applicable to other UI-related provisions in the Act. The addendum must be signed by the governor of the state, or the governor's designee.

States should contact the appropriate Regional Office to request a copy of the addendum.

10. Recoupment of STC Grant Award. Section 2164(4)(f) of the Act requires the Secretary to establish a process under which the Secretary will recoup the STC grant funds if, during the five year period beginning on the first date that the grant is awarded, the state either terminated the state's STC program, or failed to comply with the requirements of the STC grant. The Secretary's determination to recoup a grant will be based on a state's progress toward meeting the state's quarterly goals established in the approved STC grant application, STC program audits and reviews, and/or reviews of state legislation. The Department will follow 29 CFR Part 96, "Audit Requirements for Grants, Contracts, and other Agreements" in recouping any grant funds, if necessary.

11. Technical Assistance. Section 2164(e) of the Act authorizes the Secretary "to use 0.25 percent of funds available under subsection (g) to provide for outreach and to share best practices with respect to short-time compensation programs." The Department is developing a technical assistance plan that will include webinars and other strategies to help states achieve the purposes of the STC grants (i.e., implement or improve administration of STC programs and promotion and enrollment activities). The Department will also collect and disseminate successful practices based on STC program implementation and outreach tools developed as a result of these STC grants and will post information on the [UI Community of Practice](#) Web site.

12. Action Requested. State Administrators are requested to provide this information and instructions to appropriate staff.

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

14. Attachments.

Attachment I—Section 2164 of the Act

Attachment II—Short-Time Compensation (STC) Application Checklist

Attachment III—Short-Time Compensation (STC) Grant Quarterly Progress Report (QPR)

Attachment IV—Short-Time Compensation (STC) Grants - Amounts