

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE November 22, 2013

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 31-13,
Change 2

TO: STATE WORKFORCE AGENCIES

FROM: ERIC M. SELEZNOW 
Acting Assistant Secretary

SUBJECT: Impacts of the Federal Government Shutdown and Unemployment
Compensation for Federal Employees (UCFE) and State Administrative
Funding for State Unemployment Insurance (UI) Programs

1. Purpose. To respond to further questions from state workforce agencies and to provide guidance related to claims filed by furloughed workers during the October 1-16, 2013, Federal government lapse in appropriations, or "shutdown," and administrative funding for the program pursuant to the Continuing Appropriations Act, 2014.

2. References.

- Continuing Appropriations Act, 2014, Public Law (Pub. L.) No. 113-46 (Act), Sections 115 and 116;
- Code of Federal Regulations, Title 20, Part 609;
- UCFE Handbook No. 391 for State Agencies; and
- Unemployment Insurance Program Letter (UIPL) No. 31-13 and its Change 1.

3. Background. During the recent Federal government shutdown, hundreds of thousands of Federal workers were placed on "furlough" status. UIPL No. 31-13 advised state workforce agencies that the U.S. Department of Labor (Department) considered Federal workers who were placed on "furlough" status during the shutdown, during which time they were not allowed to perform their Federal services, to be unemployed. Effective October 17, 2013, the Act appropriated fiscal year 2014 funds through January 15, 2014, to allow government operations to resume, end furloughs due to the lapse in funding, and fully compensate the furloughed Federal employees. UIPL No. 31-13, Change 1, advised state workforce agencies that the Department now considers that these Federal employees are not eligible for UCFE for the shutdown period because they no longer may be considered unemployed based on their compensation under section 115 of the Act.

4. Action Requested. State Administrators must provide this information to appropriate staff.

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

6. **Attachment.** Questions and Answers: End of Federal Government Shutdown 2013

**Questions and Answers:
End of Federal Government Shutdown 2013**

A. UCFE Overpayments

1. Question: May states waive UCFE overpayments caused by the compensation (reimbursement) that furloughed employees will receive for the period of time that they were furloughed?

Answer: There are no special UCFE provisions that would allow for a waiver of UCFE overpayments caused by the compensation of furloughed Federal employees during the shutdown. Therefore, states must apply to UCFE overpayments the same waiver treatment they would apply to other UC overpayments.

2. Question: May states require Federal agencies to recover benefit overpayments from the furloughed Federal employees?

Answer: As explained in UIPL No. 31-13, Question and Answer E, if the state law provides for the employer to recover overpayments after providing claimants the opportunity for appeal and voluntary reimbursement, the state must notify and coordinate with each Federal agency employer to recover the overpayments. ETA Handbook No. 391, page V-5, describes this process.

B. Benefit Accuracy Measurement, Non-Monetary Determination Count, and Benefits Timeliness and Quality (BTQ)

1. Question: What is the effect of UCFE payments to furloughed employees on the Benefit Accuracy Measurement (BAM) sample when determining the accuracy of paid and denied claims?

Answer: Once the state agency issues any UCFE payment (to furloughed workers or workers separated for other reasons), there is a potential that the payment may be selected for the BAM sample, in accordance with ETA Handbook 395, 5th Edition. If sampled, state agency BAM units should treat these UCFE payments as normal BAM cases, and evaluate them based on all applicable eligibility criteria, even when the claimants returned the payments.

State BAM units should take into consideration that state agencies made UFCE payments based on all the facts of the status of furloughed Federal employees that existed at the time the payments were issued. Therefore, a legislative change that occurred after the payments were issued should not, in and of itself, constitute an improper payment for BAM purposes.

2. Question: May states take a workload count on Form ETA 207, as described in

Handbook No. 401 (4/2007), page 1-4-3, for non-monetary determinations regarding the “unemployment” status of furloughed Federal workers?

Answer: Yes. States may take a workload count. ET Handbook No. 401 advises states that a non-monetary determination may be counted when there is a question about whether for a particular week: a) the claimant’s activities or status constitutes “service” or “employment,” or b) the claimant earns “wages” or receives “remuneration,” resulting in ineligibility as “not unemployed,” or only partially unemployed. In UIPL No. 31-13, Change 1, the Department explained its position that these individuals were not considered to have been totally, part-totally, or partially unemployed during the Federal government shutdown. The Department’s position is based on its interpretation of the Continuing Appropriations Act, 2014 (Pub. L. 113-46), which provided compensation for Federal employees furloughed during the shutdown. However, because of the unique situation created by the shutdown, which resulted in the issuance of UIPL No. 31-13, Change 1, states should exclude these non-monetary determinations from the BTQ sample.

C. Claim Cancellation/Withdrawal

1. Question: May states offer claimants the opportunity to withdraw their claim(s) in order to avoid an overpayment(s); for example, on claims that have not yet been established (e.g., claims for which states have not issued a monetary determination)?

Answer: Yes, the state may allow claimants the opportunity to withdraw claims that have not yet been established if: (1) the claimants request that their applications be withdrawn; and (2) such withdrawal is not prohibited under the state law.

2. Question: May states cancel claims that have already been established (i.e., claims for which states have issued a monetary determination) but for which they have not issued payment(s)?

Answer: States may take appropriate action in accordance with their state law on the cancellation of any UCFE claims. Cancellation of a claim may be initiated only by the claimant. Many states have posted information on the state website(s) about the process employees will need to follow to withdraw or cancel their claim.