

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Compensation
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 5-13

TO: ALL STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Work Search and Overpayment Offset Provisions Added to Permanent Federal Unemployment Compensation Law by Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012

1. Purpose. To advise states of the work search and overpayment offset provisions added to permanent Federal unemployment compensation (UC) law by Title II, Subtitle A of The Middle Class Tax Relief and Job Creation Act of 2012, Public Law (Pub. L.) 112-96 that may require amendments to state UC law.

2. References.

- Title II, Subtitle A of Pub. L. 112-96, The Extended Benefits, Reemployment, and Program Integrity Improvement Act (the Act);
- Sections 3304 and 3306 of the Federal Unemployment Tax Act (FUTA);
- Section 303 of the Social Security Act (SSA);
- Federal-State Extended Unemployment Compensation Act of 1970 (EUCA);
- 20 CFR Part 603, Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of State UC Information;
- 20 CFR Part 604, Regulations for Eligibility for Unemployment Compensation;
- 20 CFR Part 640, Standards for Benefit Payment Promptness--Unemployment Compensation;
- Unemployment Insurance Program Letter (UIPL) No. 787; and
- UIPL No. 11-09.

3. Background. President Obama signed the Act on February 22, 2012. The Act amends permanent Federal UC law to require that, as a condition for receipt of UC administrative grants or certain FUTA tax credits, a state law must—

- a. Require, as a condition of eligibility for regular UC, that a claimant must be able to work, available to work, and actively seeking work; and
- b. Offset certain UC overpayments, including Federal Additional Compensation, against UC due to the individual.

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The re-employment of claimants is a central emphasis of the UC program, and work search is a critical component to success. The Act amended Federal UC law to strengthen the work search component by ensuring that all state laws include a work search requirement while preserving state flexibility in administering the program.

Improving the integrity of the state UC programs by reducing improper payments, especially overpayments, is a priority. The Act amended Federal UC law to strengthen integrity efforts by making mandatory the recovery of certain overpayments through offsets.

This UIPL provides guidance to states on these two new requirements in Federal UC law. For purposes of determining whether a state's law conforms to them, the Department of Labor (Department) will consider both statutes and interpretations of state statute. Interpretations include state regulations, court cases, precedent decisions, Attorney Generals opinions, and administrative policy and procedures.

4. Analysis of New Provisions.

a. Section 2101: Consistent Job Search Requirements.

Section 2101 of the Act adds paragraph 12 to section 303(a), SSA, requiring that “as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work.”

i. Able and Available for Work (A & A). Section 303(a)(12), SSA, adds an explicit A & A requirement to Federal UC law. This requirement is consistent with existing Department regulations, which interpret Federal UC law to allow payment of UC only to individuals who are A & A. (20 CFR 604, published in the Federal Register at 72 FR 1890 on January 16, 2007.) These regulations apply to all state UC laws and programs. States that conform to the regulations at 20 CFR 604 meet the new statutory A & A requirement. As these regulations have been in effect for several years, state laws should already conform to the new A & A requirement; however, states should review their laws and UC administration to assure that they are in conformity and substantial compliance with the Department's regulations and Federal UC law.

ii. Active Search for Work. Section 303(a)(12), SSA, also requires an applicant to actively seek work as a condition of eligibility for UC for any week. All states currently require claimants to search for work to be eligible for UC. States should maintain this requirement in their laws, and have rules, regulations, and procedures that ensure they substantially comply with this requirement.

Other provisions of federal UC law, including reforms to Federal UC law in the Act, dovetail with the “actively seeking work” requirement. For example, the requirement does not apply to workers participating in state-approved training, and for Short-Time Compensation by the workers “being available for their workweek as required by the State [UC] agency.” See sections 3304(a)(8) and 3306(v)(5), FUTA.

With regard to individuals participating in a demonstration project authorized under section 305, SSA, participants in demonstration projects meet the work search requirement by virtue of being employed or in training. Thus states are not required to and should not modify their state laws or otherwise weaken work search requirements in order to participate in the demonstration project. Section 305(e), SSA, authorizes two types of activities that a demonstration project may include: subsidies for employer-provided training, such as wage subsidies, and direct disbursements to employers who hire individuals receiving UC. With regard to the first activity, section 3304(a)(8), FUTA, provides that “compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work).” Since training approved under a demonstration project is approved training, the work search requirement will not apply to individuals while in that training. With regard to the second activity, an individual will be ineligible for UC while employed by an employer participating in a demonstration project. Accordingly, the work search requirement will not apply to this individual while in that employment.

Federal UC law establishes strictly limited circumstances under which states may not hold UC claimants to the work search requirement. FUTA certification is conditioned upon the state not denying UC to otherwise eligible applicants who have refused to accept work under certain circumstances, as required by section 3304(a)(5), FUTA. Therefore, states may not require UC claimants to search for work that does not meet the labor standards outlined in 3304(a)(5), FUTA. Also, EUCA, which establishes the extended benefits (EB) program, explicitly permits states to consider individuals eligible for EB if they fail to search for work because they are on jury duty or hospitalized for treatment of an emergency or a life-threatening condition. (Section 202(a)(3)(A)(ii), EUCA.)

Further, because Federal UC law does not specifically define “actively seeking work,” states have some discretion to establish a reasonable definition. States will exercise their discretion consistent with the strong expectation that UC beneficiaries will be engaged in concerted and effective efforts calculated to find a suitable job in the shortest period of time that is practicable. For example, states may require that individuals conduct a work search that is appropriate for the type of work that is suitable for the individual’s work experience. Any requirements established by states on the type or number of work search contacts must be closely tied to an expectation that the claimant will be quickly reemployed. For example, states may determine that an individual who is on a temporary layoff with a definite recall date, and is therefore job-attached, fulfill the active search for work requirement if they maintain contact with, and remain available to, the employer with whom they are job-attached.

iii. Effective Date. Section 2101 of the Act provides that the new A & A and work search requirements in section 303(a)(12), SSA, shall apply “to weeks beginning after the end of the first session of the State legislature which begins after the date of enactment of this Act.” The Act was enacted on February 22, 2012. States whose 2012 legislative session began before that date, or that did not have a legislative session in 2012, must conform to these new requirements no later than the first week after the end of the next session of the legislature. States whose 2012 legislative sessions began after February 22, 2012, must conform to these requirements no later than the first week after the end of the 2012 legislative session.

b. Section 2103: Improving Program Integrity by Better Recovery of Overpayments.

i. Mandatory Overpayment Recovery via Offset. Section 2103 of the Act amends section 3304(a)(4)(D), FUTA (the “withdrawal standard”), and section 303(g)(1), SSA, to require states to offset any UC overpayments, paid under a Federal or other state program and not previously recovered, against payments of UC due to the individual under such state’s UC law. Before enactment of the Act, sections 3304(a)(4)(D), FUTA, and 303(g)(1), SSA, permitted, but did not mandate, these offsets. The states that opted to recover such offsets by deductions from UC, before enactment of the Act, and who had agreements in place to offset overpayments of Federal or other state UC, likely already comply with this new requirement. However, other states may need to amend their UC laws to require and implement the new mandatory overpayment recovery. Each state must determine whether an amendment to its UC law is necessary.

In addition, there are two agreements that states must enter into before they can commence these overpayment recoveries: 1) the agreement between the Secretary of Labor and the state to offset Federal overpayments (Cross Program Offset Agreement); and 2) the Interstate Reciprocal Overpayment Recovery Arrangement (Interstate Agreement) to offset overpayments of UC paid under other states’ UC laws. States that have already signed the Cross Program Offset Agreement and the Interstate Agreements will not have to amend those agreements. However, states that have not yet entered into one or both of these agreements must do so in order to establish a mechanism to meet the requirement that these overpayments be offset.

Section 2103 did not amend the section 303(g)(1), SSA, requirement that the amount deducted “shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular compensation” paid by a state. Therefore, all of the state’s applicable notice and hearing procedures, including provision of information on applying for a waiver of recovery of the overpayment, if provided for in state law, must be followed before a state may begin offsetting overpayments from an individual’s current or future UC payments. States must provide individuals with a determination of the overpayment and an opportunity to appeal before the state initiates overpayment recovery (whether through offset from current UC payments or otherwise). (Section 303(a)(3), SSA.)

Because the amended section 303(g)(1) does not specify the exact process for offsetting UC overpayments, states have significant flexibility in the way they implement the offset requirement. While states must attempt to recover the full amount of the overpayment, states may limit the amount that will be deducted from each UC payment. For example, if state law provides that deductions will be limited to a specified percentage of the weekly benefit amount (WBA), (e.g., no more than 50 percent of the WBA will be offset to recover an overpayment), the state agency may not deduct an amount that is greater than that percentage to recover overpayments as mandated in 3304(a)(4)(D), FUTA, and 303(g)(1), SSA.

ii. Expansion of Types of Overpayments to be Recovered. Section 303(g)(3), SSA, identifies the UC programs for which overpayments must be recovered under section 3304(a)(4)(D), FUTA, and 303(g)(1), SSA. Section 2103 of the Act amended section 303(g)(3), SSA, to add the Federal Additional Compensation program (FAC) to the list of covered UC programs. Therefore, FAC overpayments are now required to be recovered via deductions from UC.

Section 303(g), SSA, requires states to enter into an agreement with the Secretary of Labor (Secretary) to recover overpayments of Federal UC by offset. The Department interprets Section VI. C. of the current agreement, which defines Federal UC programs to include “[T]emporary extended unemployment compensation under the federal Temporary Extended Unemployment Compensation Act of 2002 and any future similar, federal law,” to include FAC. UIPL No. 11-09, Attachment A, noted that if a state has a Cross Program Offset Agreement with the Secretary, the state will use state UC to recover FAC overpayments in accordance with that agreement. Further, if a state has an Interstate Arrangement in effect, the state may use state or other Federal UC paid in that state to recover FAC overpayments for other states. Therefore, states that have already executed a Cross Program Offset Agreement with the Secretary, or an Interstate Arrangement in effect, may offset FAC overpayments through those means as required by the Act.

iii. Effective date. Section 2103 of the Act provides that the overpayment recovery requirements shall apply “to weeks beginning after the end of the first session of the State legislature which begins after the date of enactment of this Act.” P.L. 112-96 was enacted on February 22, 2012. States whose 2012 legislative session began before that date, or that did not have a legislative session in 2012, must conform to these new requirements no later than the first week after the end of the next session of the legislature. States whose 2012 legislative sessions began after February 22, 2012, must conform to these requirements no later than the first week after the end of the 2012 legislative session.

5. **Action Required.** States are requested to review this UIPL, and assure their laws and practices conform to and comply with its guidance.
6. **Inquiries.** Inquiries should be directed to the appropriate Regional Office.
7. **Attachment.** Text of Sections 2101 and 2103 of The Extended Benefits, Reemployment, and Program Integrity Improvement Act (Title II, Subtitle A of Pub. L. 112-96).