

Examples for Determining Reasonable Assurance

* The responses in the first four examples carry out the full analysis described in the UIPL. The remaining examples only conduct the analysis until a determination can be reached or only address the main issue the example is intended to illustrate.

I. Contingent On Enrollment and/or Funding

a. Enrollment

1. An adjunct instructor taught three classes of English 101, a required course, during the spring semester. Notwithstanding the fact that the offer of employment to teach this course has always been contingent on enrollment, the instructor has taught three classes of English 101 for ten consecutive semesters. There is no information indicating that enrollment will decline in the fall semester. At the conclusion of the spring semester, the instructor was given an offer to teach three classes of English 101 in the fall contingent on enrollment. Is UC payable between academic years based on her services as an adjunct instructor for the school district?

No. The State agency made the prerequisite determinations that the educational institution made an offer to the claimant, the employment offered is in the same capacity, and the economic terms and conditions of the job are not considerably less. Because the claimant does not have a contract, the State agency must determine if the claimant has a reasonable assurance. The State agency determined that the contingency (enrollment) is not within the control of the employer but reasonably concluded that it is highly probable there would be a job available to the claimant as enrollment (no indication it was declining), teaching history (ten consecutive semesters teaching the course), and nature of the course (intro-level required course taught every semester) indicate that the institution will offer the instructor the opportunity to teach the class the following term. Giving primary weight to the contingent nature of the offer, the State agency reasonably concluded that it was highly probable the enrollment contingency would be met and therefore, the between and within term denial applies and the claimant may not be paid UC based on the educational wages.

2. An adjunct instructor taught an intermediate level political science course that is not required for all students during the spring semester. The instructor has been teaching this course at this educational institution during the last five academic years. However, because student interest in this course varies from semester to semester, she only taught it during six of the last ten semesters even though she was available to teach during each semester. The four semesters in which she did not teach the class were Spring Semester Year One, Fall Semester Year Three,

Spring Semester Year Four, and Fall Semester Year Five. Both funding and enrollment at the educational institution have increased and the political science department recently expanded, but there is no information indicating that enrollment patterns for this course will substantially change. The institution is advertising the course in its course catalog with the adjunct instructor's name. The claimant's employer offered the claimant the opportunity to teach the course again in the fall subject to enrollment. Is UC payable between academic years based on her services as an adjunct instructor?

Yes. Considering the totality of circumstances, a State agency determined that it is not highly probable that a job in the same capacity with the same or similar economic terms and conditions is available to the claimant in the following term because, even though the claimant was available to teach the course during each of the past 10 semesters, the school did not hire claimant to teach this course during 4 of the last 10 terms. Giving primary weight to the contingent nature of the offer the State agency reasonably concludes that it was not highly probable that the enrollment contingency would be met as enrollment in the course had varied during the last five academic years, resulting in the claimant not being hired to teach the course. Therefore, the contingency outweighs any of the facts that would indicate the claimant has a reasonable assurance. Therefore, the claimant does not have a reasonable assurance and may be paid UC based on these services.

3. In the Fall semester, the claimant taught one course of English 101 class at College A, two courses of advanced political science at College B, and one course of renaissance literature at College C. All three colleges have made offers of employment to the claimant to teach again in the spring semester, and each offers the same per course rate of pay, but College B is only offering the claimant one course, not two. All of the offers are contingent on enrollment. At College A, English 101 is a required course and College A has recently increased enrollment. No additional information is available on enrollment in advanced political science courses at College B. College C has an innovative program on renaissance studies, which has increasingly attracted students to the College; however, the College has only taught renaissance literature in the Spring semester three out of the five most recent spring semesters due to lack of enrollment. How does the between and within term denial apply to this claim?

In order to make a determination the State agency must apply the prerequisite determinations to each of the offers received. The offers from College A and C meet the prerequisite determinations as each offer is to provide services in the same capacity and the economic terms and conditions are not considerably less as the offer is to teach the same number of courses. College B's offer does not meet the prerequisite determination as the offer is only to teach half the number of classes previously taught, and therefore, is considerably less than the prior term. Thus, College B has not met the prerequisite determinations. Because the claimant does not have a contract with Colleges A and C, the State agency must

determine if the claimant has a reasonable assurance from each of the institutions.

College A: The state agency determines that the enrollment contingency is not within the employer's control. In considering the totality of circumstances, the State agency reasonably concludes it is highly probable that a job will be available to the claimant as the course is required and enrollment has increased. Similarly, giving primary weight to the contingency, the State agency determines it is highly probable that the enrollment contingency will be met as enrollment has increased at College A. Therefore, the claimant has a reasonable assurance from College A.

College C: The enrollment contingency is not within the employer's control. In considering the totality of circumstances, the State agency reasonably concludes that it is not highly probable that there will be a job available to the claimant as the course has only been offered three of the last five semesters.

State law/policy may provide for either of two options for determining which wages the claimant may use to establish monetary eligibility. However, whichever option is used must be used consistently.

a) Option 1: Because the claimant has a reasonable assurance from one college, but not from the other two, UC is payable based on the services from the two schools for which there is no reasonable assurance. UC is not payable based on the services from the school that provided a reasonable assurance.

b) Option 2: Because there is only a reasonable assurance for one class from one of the schools making up 25 percent of the wages from the previous term, the economic conditions as a whole are considerably less in the following academic year or term than in the first academic year or term, and UC is payable between or within terms based on all of the educational services.

(Note that, if permitted under state law, the educational institution that provided a reasonable assurance may be relieved of reimbursement for their proportional share of the UC paid.)

b. Funding

1. An adjunct instructor taught three cyber-security courses at a community college, which were funded by a one-year pilot grant from a national association during the fall and spring semesters of an academic year. It was the first time that the school had received the grant. The instructor received an offer, contingent on funding, to teach the same courses in the next academic year. However, at the time of application for unemployment compensation, the association had not made any decision to continue funding the pilot program during the next academic year. Is UC payable between academic years based on the services as an adjunct instructor at the community college?

Yes. The State agency determined that the prerequisite determinations are met as the educational institution made an offer to the claimant, the employment was in the same capacity, and the economic conditions of the job were not considerably less. Because the claimant does not have a contract, the State agency must determine if the claimant has a reasonable assurance. The State agency determined that the contingency (funding) is not within the control of the employer. Therefore, in giving primary weight to the contingent nature of the offer, the agency reasonably concluded that it was not highly probable that the contingency would be met as funding is not certain. Therefore, the claimant does not have a reasonable assurance and the State agency may not deny the claimant benefits based on the between and within term denial provision.

2. A teacher is offered the same job, contingent on the availability of funding, in the second academic year in a special program that is funded from an outside source. This program has been funded for the past four years. No facts indicate that funding will not be available, though at the beginning of summer recess no notification of the following year's funding has been received. Other than this lack of notification, which usually arrives late in the summer, no reason exists to indicate that the program will not continue in its current form. Is UC payable between academic years based on the services as a teacher in the special program?

No. Analyzing the totality of circumstances, the State agency reasonably concluded it is highly probable that there will be a job available to the claimant as the employment history shows there was funding from the outside source and a job available to the claimant for the past four years. Giving primary weight to the contingency, the state agency reasonably concluded it is highly probable the funding contingency will be met as there had been funding available for the past four years. Therefore, UC is not payable based on these services.

II. Contract Reduction, Changes in Terms and Conditions of Employment, and Substitutes

a. Contract Reduction Is Loss of Work

1. A full-time teacher during the first academic year is offered a contract to teach one day per week during the second academic year with the salary reduced proportionally. Rather than refuse the contract and risk no earnings at all, the teacher accepts the offer. Is UC payable based on the services as a teacher?

Yes. The State agency adjudicating the claim reasonably determined the economic terms and conditions offered are considerably less than the previous academic year because there is a salary reduction of greater than 10%. Therefore, the State agency may not deny the claimant benefits based on the between and within term denial provision.

b. *Change in Economic Terms and Conditions of Employment*

1. A school assistant principal was informed that because of a restructuring of the administrative offices of the county school system, her position would be filled by an administrator whose position at the central office had been eliminated. Therefore she would be offered a position as a teacher in another school within the school system at no reduction in pay for the next academic year. Does the change in position mean that the between and within terms denial provisions do not apply?

No. Because both positions are “in an instructional, research, or principal administrative capacity” (professional capacity) and the offer meets the other prerequisite determinations, the between and within terms denial provisions apply and the claimant cannot receive UC based on these services if a reasonable assurance of employment in the next academic year or term exists.

2. A full time teacher at a local high school was offered a position as a full time teacher at another school system in a different part of the state for the following year. Because her husband has been transferred to that part of the state, she told the new school system that she would like to take the job. The terms of the offered position are identical to those that she had in the first job. Is UC payable between academic years based on the services for the local high school?

No. Even though the offer that she accepted is from a different school system, it is still in an instructional capacity and the offer meets the other prerequisite determinations. As such, she has a reasonable assurance of performing services in an instructional capacity during the next academic year and she may not use these services to establish eligibility for UC.

3. An on-call substitute teacher in the first academic year is offered a contract to remain on the on-call list for the next year for the same per diem wage. However, a new collective bargaining agreement provides that certified teachers will be called to work before non-certified teachers. The claimant is a non-certified teacher and had previously been one of the first substitutes called for work, but now will be called infrequently if at all. Is UC payable between academic years based on the services as an on-call substitute?

Yes. To determine whether the economic conditions requirement is met, the State must first compare the offer to the offer from the prior year to determine if the terms of the employment offered in the following academic year or term are not considerably less. However, the state must also determine whether any changes in circumstances have occurred affecting the likely amount of work offered. In comparing the offers and considering the new collective bargaining agreement, the state agency determines that the offer does not meet the prerequisite determination that the economic conditions of the job offered are not considerably less because the claimant will likely have a greater than 10 percent

reduction in hours and a corresponding reduction in compensation. Thus, the offer for the second academic year is considerably less than that of the first academic year.

4. A full-time teacher is told that their current contract will not be renewed, but is offered a one-year contract as a "long-term" substitute teacher. In this district, a "long-term" substitute replaces a regular full-time teacher who may be ill or on leave of absence for as much as an entire school year. The rate of pay is the same as for a full-time teacher and daily employment is guaranteed for the term of the contract. Is UC payable between academic years based on the teacher's services as a full-time teacher?

No. In this case, the State agency determined that the contract was offered by an individual with authority to do so, the employment is in the same capacity (professional), and the economic terms and conditions of the contracts are identical. Therefore, the between and with terms denial provision applies and the UC may not be paid between terms based upon those services.

5. Claimant, a full-time tenured teacher, has been employed by a school district for three years as a Spanish language teacher. The District notifies the claimant and six other tenured teachers that due to budgetary cutbacks, the District will be reducing services and that their positions will be eliminated. After a formal hearing, the District notified the claimant and six other tenured teachers that they were terminated effective the end of the academic school year. Because the teacher has tenure, the claimant has certain reemployment rights with the District under provisions of the Education Code, as did the other tenured teachers who were terminated. Therefore, the District notifies the teachers that they have been placed on the substitute teacher list. The District informed the claimant that he would receive his regular pay rate when he worked as a substitute only if he worked 21 days or more within a 60-day period. If he worked less than that, the rate of pay as a substitute would only be half of that, determined on a per diem basis. There is no information suggesting that the claimant will be called to substitute on any regular basis, or at all. Is UC payable between academic years based on the services as a Spanish-language teacher for the school district?

Yes. In making the prerequisite determinations, the state agency determines that because the rate of pay depends on the frequency of work and there is not sufficient information to determine what the rate of pay will be, the economic terms and conditions prerequisite determination test is not met as the employer is not ensuring that the economic terms and conditions will not be considerably less. Therefore, the claimant does not have reasonable assurance.

6. A college employee performs research as a biochemist at a salary of \$75,000 a year. At the end of the school year, he is informed that the grant for the research has ended and he will be offered a position as an associate professor of biochemistry for the upcoming school year. Associate professors with his

credentials are paid \$45,000 a year. Is UC payable between academic years based on the services as a researcher for the college?

Yes. Even though he was offered a position in a professional capacity, the pay is considerably less than in the previous term because he will not earn at least 90 percent of what he earned in the prior year. Therefore, the offered employment does not meet the economic terms and conditions prerequisite determination.

III. Voluntary Quit with Good Cause

a. *Good cause related to the work*

1. An adjunct professor at a public university was instructed by the Dean of Students to make sure that no scholarship athletes received a grade of less than a C in any of the classes he taught. When the professor refused to do so, and gave a failing grade to two members of the football team who performed substandard work in the class, the Dean had the grades changed to a C. During the next semester the professor gave failing grades to three members of the football team because they skipped class on a regular basis and did not turn in any of the required work. Again the Dean had the grades changed to a C. When the professor complained to the President of the College, he refused to take any action and told the professor to keep quiet about the situation. The professor was offered a position as an adjunct professor with a minor increase in pay for the next academic year if he agreed to stop “making waves.” Rather than continue to falsify grades, which constituted a violation under both the university code of conduct and the state professional credentialing board rules, the professor resigned his position. When the school year ended the professor applied for UC. The state agency ruled that he voluntarily quit work with good cause related to the work. Under State law, a voluntary quit with good cause related to the work is not disqualifying. Is UC payable between academic years based on the services as an adjunct professor for the public university?

Yes. Even though the individual had an offer to perform services in the same capacity with a raise in pay for the next academic year, the individual’s separation from employment was a voluntarily quit with good cause and not disqualifying under state law. As such, the offer is not considered when determining whether claimant had a reasonable assurance of employment in the next academic year.

b. *Good personal cause*

1. At the end of the academic year a teacher informs the school that his wife, an officer in the United States Army, has been transferred to a new duty station in another state. He will be accompanying her to her new assignment and therefore will not be able to accept an offer to teach for the school system during the next school year. Under State law, a voluntary quit to follow a military spouse to a

new duty station is not disqualifying. Is UC payable between academic years based on his wages as a teacher?

Yes. Even though the individual had an offer to perform services in the same capacity for the next academic year, the individual's separation from employment was a voluntarily quit with good cause and not disqualifying under State law. As such, the offer is not considered when determining where there is a reasonable assurance in the next academic year and the wages are available for use to determine eligibility for UC.

(If UC is paid to individuals who are eligible due to a voluntary quit with good cause under state law, the state may relieve the employer of reimbursement if such relief is permitted under State law.)

IV. Retroactive Payment of UC

a. *Non Professional*

1. An individual performed services as a custodian for a school dormitory for a major university. It was the first year of his employment. During the summer semester the dormitory is not used to house students, but at the end of the academic year he is given assurances by his manager that he will be employed in the same position and under the same terms in the upcoming academic year. When the custodian was hired, he was told the previous custodian worked with the university for the past twenty years and left to retire. The university also told the custodian that although he was hired on an academic year to year basis, they hoped that he would be willing to work with them every year. The state has adopted the optional between and within term denial provisions for individuals providing services in a non-professional capacity. Because he is not sure whether he will be working the next year, he continues to file for unemployment during the summer, though the state does not pay the claims because it has determined that he has a reasonable assurance of employment in the next academic year. One week before the new school year starts, a fire destroys one of the dormitories and the school contracts with a local hotel to house the students. Due to a lack of seniority, the claimant is not retained for the second year. Is he eligible to receive UC retroactively for the weeks for which he filed, but was denied UC because he had a reasonable assurance of employment?

Yes. Clause (ii) of Section 3304(a)(6)(A), FUTA, requires the retroactive payment of UC if the individual "was not offered an opportunity to perform such services" if the claimant filed a timely claim for compensation for that week and it was denied solely because he had a reasonable assurance of performing the services. Note, clause (ii) only applies to services in the non-professional capacity. Because he performed services in a non-professional capacity, for each week that he timely filed a claim for compensation and was denied because he had a reasonable assurance, he is entitled to retroactive payment of UC.

b. Professional

1. An adjunct professor taught three upper level courses in ceramics at a local university. He filed claims for UC at the end of the term, but was denied because he had a received reasonable assurance that he would teach the three courses during the next academic year. One month before the school year began, the legislature introduced and enacted an appropriations bill that cut the funds for fine arts courses. As a result, the university was required to cease offering the course and the adjunct professor's employment was not renewed. Is he eligible to receive UC for the weeks that he was denied between terms if he had continued to file claims?

No. Because the individual performed instructional services, which is in the professional capacity category, Section 3304(a)(6)(A)(i) applies. That clause does not contain language permitting retroactive payment of UC. In this case, the reason the job is no longer being offered was out of the control of the university and was not reasonably foreseen when the assurance was given. Thus, retroactive payment of UC under these circumstances would not be permissible. However, if the professor files a new claim for UC, he may receive UC if he is otherwise eligible.

V. Other Potential Reasonable Assurance Topics

1. A software developer works at a software development company and in the evenings the claimant teaches an intro to computer science at a public community college. In late-May, the software developer is laid off from the job at the software development company in a routine company downsizing and applies for unemployment insurance. The claimant has a signed contract with the community college to teach intro to computer science for the next academic year for the same compensation as in the previous academic year. Is UC payable based on the claimant's services for the software development company?

Yes. The claimant's services for the software company are not subject to the between and within term denials because they are not for an educational institution. Therefore, if the claimant is otherwise eligible, the claimant can receive UC for the claimant's services at the software development company.

2. A lawyer employed full-time as an associate in a large law firm also teaches a law class in the evening as an adjunct faculty member at the local public university. Although the lawyer has taught the class during both the fall and spring semesters for the past three years, she does not have a reasonable assurance that she will be teaching the class again in the next semester. Is UC payable based on the lack of reasonable assurance?

An individual must meet all eligibility requirements in order to receive UC. In this case, the individual would not be considered unemployed under any state law because she is employed full-time. For this reason, she is not eligible to receive UC based upon her services as an adjunct faculty member even though she does not have a reasonable assurance with her educational employer.

3. A graduate student is enrolled in the first year of a three-year Ph.D. program at a state university and is employed by the university as a teaching assistant for three required freshman English courses for a fixed salary of \$8,000 as part of his financial aid package. At the end of the spring semester he is told that he will be expected to work as a teaching assistant for two courses for a different professor in the upcoming school year for the same per course salary as a continuation of his financial aid package. In the upcoming school year, the graduate student will take three courses for the Ph.D. program. Is UC payable between academic years based on his services as a teaching assistant?

Before determining whether the graduate student can be paid UC based on his services as a teaching assistant, the state agency must first determine whether the graduate student's services are covered employment under state UC law. If the graduate student's services are not covered employment, no determination of reasonable assurance needs to be made. If however, under state law, the services are covered employment, the between and within terms denial provisions apply and the state must determine whether a reasonable assurance exists. For purposes of FUTA, the graduate student in this example is not in covered employment as he is enrolled in a state university and is regularly attending classes. For the purposes of this example, the graduate student is also not covered under state law. Therefore, these services cannot be used to establish monetary eligibility for UC.

4. The claimant from the example above files a claim for benefits again in June 2016, when the summer recess begins. During the summer recess, is UC payable based on the services for the school?

No. The claimant may not be paid UC, based upon those wages during the 2016 summer recess period because the claimant has a contract to perform services in the 2016 fall semester and the summer recess falls between two regular but not successive terms.

5. For the past 5 years, an adjunct instructor has been teaching political science courses during all four quarters (fall, winter, spring, summer) at a community college. The college operates on an academic year consisting of four quarters. Each quarter consists of 11 weeks of classes, with a two-week break between each quarter. At the conclusion of the spring quarter, she is informed that she will not be teaching during the summer quarter. However, she will teach the same number of courses in the fall quarter as she has in the previous quarters. The state agency

determines that there is a reasonable assurance that she will be teaching the courses during the fall quarter. Is UC payable during the summer quarter based on her services as an adjunct instructor?

Yes. The state agency must determine whether the individual is in a period between academic terms and whether or not the individual has a reasonable assurance of providing services in the next academic term. Because the college has a 12-month academic year, consisting of four quarters, the summer quarter is not a period between academic years.

Section 3304(a)(6)(A)(i), FUTA, requires that the denial apply between successive terms unless there is a specific agreement that provides for providing services between regular, but not successive terms. In this case, the adjunct instructor had been performing services every year in an instructional capacity during all four quarters of the academic year and there is no agreement to provide services only during non-successive terms. Therefore, a reasonable assurance for the fall term does not affect the determination of whether she has a reasonable assurance in the summer term. In this case:

- 1) the period between successive terms is the two-week period between the spring and summer quarters;*
- 2) the claimant performed services in the first academic term (spring);*
- 3) the state agency determines that the claimant does not have a contract or reasonable assurance of performing services in the successive term (summer) because she has been informed that she will not be performing services during that term;*

Therefore, the claimant would be paid UC during the summer quarter and during the two-week periods before and after that quarter based on her services as an adjunct instructor because she does not have a reasonable assurance of performing service in the successive academic term.