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**DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 11-88**

**TO : ALL STATE EMPLOYMENT SECURITY AGENCIES**

**FROM : DONALD J. KULICK**  
**Administrator**  
**for Regional Management**

**SUBJECT : Effect of the Immigration Reform and Control Act (IRCA) Upon  
Unemployment Insurance (UI) Procedures**

1. **Purpose.** To clarify the effects that IRCA provisions have upon UI claimstaking procedures and providing of information to the Immigration and Naturalization Service (INS).
2. **References.** Section 121, IRCA; Sections 303(a)(5) and 1137, SSA; Sections 3304(a)(4) and (14), FUTA; Unemployment Insurance Program Letter (UIPL) Nos. 15-78, 6-83, 1-86 (51 FR 29713), and 12-87; General Administration Letter (GAL) Nos. 43-80, and 7-87; Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976 - Public Law- (P.L.) 94-566 (including Supplement # 3, Questions and Answers, issued May 6, 1977).
3. **Background.** Section 121 of IRCA, P.L. 99-603, contains three provisions affecting the Federal and Federal-State UI programs. Section 121(a)(1) amends Part A of Title XI of the SSA by adding new subsections (d) and (e) to Section 1137 - "Income and Eligibility Verification System." These new subsections establish immigration status verification procedures for the UI and other programs. In addition: (1) Section 121(b)(3) of the Act amends Section 302(a) of the SSA to provide for reimbursement to State agencies of 100 percent of that portion of the reasonable expenditures of the States which is attributable to the costs of implementing and operating the immigration status verification system described in section 1137(d); (2) Section 121(c) of the Act establishes effective dates, and includes provisions for waiver of alien verification system

requirements and for certain reports to Congress; and (3) Section 121(d) also requires certain General Accounting Office reports, which involve the Department of Labor and the State Employment Security Agencies (SESAs).

UIPL No. 12-87, dated March 11, 1987, was issued to explain these new provisions. Subsequently, SESAs have questioned how these provisions affect basic claimstaking and determination procedures. This UIPL is being issued to answer these questions and to assure consistent interpretation of IRCA requirements upon claims processing by all States.

#### 4. **Effect of IRCA on UI Claimstaking Determinations**

- A. Question. Did the provisions of IRCA change Federal requirements that an alien's base-period wages may only be used for computing monetary entitlement if the individual had legal status at the time that the services were performed?

Answer. No. The status of temporary residence or the granting of work authorization does not confer retroactive lawful presence for purposes of monetary entitlement. Therefore, the alien's legal status must be examined during the base period for determining whether the wages may be used for computing monetary entitlement. This interpretation is contained in UIPL No. 12-87, Attachment III, Pg. 3.

IRCA added a new category of aliens "lawfully admitted for temporary residence" to whom benefits are payable based upon alien status. The category "lawfully admitted for temporary residence" refers to a legal resident status conferred by the Immigration and Naturalization Service (INS) on certain aliens who entered the United States before January 1, 1982. Because this status also provides for the aliens to receive work authorization, these aliens shall be considered "lawfully present for purposes of performing such services." Payment of benefits to this category of aliens, is permissible under Section 3304(a)(14), FUTA, to the extent that their base period wages were earned while in this category or another category (such as permanently residing under color of law (PRUCOL)), qualifying under State law provisions corresponding to Section 3304(a)(14).

Section 3304(a)(14), FUTA, prescribes the conditions under which benefits may be paid based on services performed by an alien who was in a proper alien status "at the time services were performed." Benefits based on services performed while an alien is lawfully admitted for temporary residence, or is granted work authorization pending a ruling on his/her application, are payable because the work authorization grants an alien the status of being "lawfully present for purposes of performing such services."

- B. Question. If an individual can be paid UI before amnesty is granted, would payments, made during the time period that the amnesty decision was being considered, be overpayments if amnesty were not granted?

(This question assumes that the individual was legally authorized to work during the base period and could establish monetary entitlement.)

Answer. No. Under Section 3304(a)(14), FUTA, the wage credits used to establish a claim and monetary entitlement to benefits must be earned while an alien is legally authorized to work in the United States. Further, a claimant must be "able and available" to work to be eligible for UI. In addition to meeting other State availability requirements, an alien must be legally authorized to work in the United States to be "available" for work. (See UIPL 1-86.) This means that the claimant must, while claiming benefits, be in one of the three categories specified in Section 3304(a)(14).

Effective with the date the INS issues work authorization, the alien is considered in legal status for both earning valid wage credits and being legally available for work. This can occur as early as the date the alien first applies for the legal status or even earlier if the alien was apprehended before the application period. (A person could also have a previously issued work authorization or be in a PRUCOL status.) An alien remains in legal status as long as the work authorization remains valid. This should be for as long as it takes the INS to rule on the individual's request for amnesty.

If the INS determines the alien is not eligible for amnesty, any benefits paid for any claim week prior to such denial of the amnesty and the termination of work authorization are not overpayments because the benefits were paid while the alien was in a legal alien status. Any benefits paid to the alien for claim weeks after the denial of his amnesty request and termination of his work authorization would be paid while the individual was not in a legal status and are, therefore, overpayments. These payments are subject to the overpayment recovery and waiver provisions of the State law.

- C. Question. How does the requirement that individuals must sign, as a condition of eligibility, a declaration of citizenship or satisfactory immigration status effect initial claimstaking?

Answer. Under the new Section 1137(d)(1)(A), SSA, a claimant must declare in writing, under penalty of perjury whether he is a citizen or national of the United States, and if not, whether the individual is in a satisfactory immigration status. This requirement is effective October 1, 1988 (or as early as October 1, 1987 at the State's election), but is contingent upon the terms and conditions of the Secretary's determination(s) concerning the waiver of SESA(s) participation in the immigration status verification system as provided by Section 121(c)(4)(B), IRCA.

Meanwhile, States may wish to examine their claim forms to make sure the forms comply with this new requirement. We suggest revising claim forms to include a signed statement such as: "I declare under penalty of

perjury, \_\_\_\_\_ that I am a citizen or national of the United States, or \_\_\_\_\_ that I am in a satisfactory immigration status (check one)."

The IRCA does not require SESAs to change initial claimstaking procedures to require claimants to furnish proof of citizenship at a condition for payment of benefits. SESAs may continue to utilize current initial claim procedures for determining citizenship status. Subject to the terms and conditions of the Secretary's waiver determination(s), SESA(s) may be required to implement all or part of the verification requirements of Section 1137(d)(2)-(5), SSA.

- D. Question. How does the requirement that individuals must produce documentation of citizenship status or satisfactory immigration status in order to be hired affect job search/eligibility requirements under UI?

Answer. The IRCA does not specifically require SESAs to change their basic claimstaking procedures with respect to determining citizenship status. However, these amendments do have significant implications for determining UI eligibility; therefore, SESAs are advised to examine their procedures in light of the amendments.

Citizenship status may become a factor in determining eligibility for benefits. We have long interpreted the "withdrawal" standard to limit payment of UI to individuals who are "legally" available for work.

This interpretation was issued in UIPL 1-86 with respect to aliens. However, this interpretation of the "withdrawal" standard now applies to all claimants since it is now a legal requirement under the IRCA that an individual must provide documentation of his citizenship or legal right to work in order to be hired and thereafter retained by an employer. Further, employers may not retain those workers hired after November 6, 1986, for whom citizenship or legal alien status cannot be established under the terms of the IRCA.

(See GAL 7-87 listing acceptable forms of evidence for substantiating citizenship or legal alien status and providing information on requirements which an employer must follow in the hiring and retaining of individuals based upon their legal status.)

Because citizenship status could potentially be a factor in determining eligibility, we believe the SESA should advise claimants of their responsibility for having documentation of citizenship or legal alien status in order to be considered "available for work." You are also encouraged to provide notices listing the types of documents acceptable as evidence of citizenship or legal alien status to each claimant currently filing, and to individuals filing new, additional and reopened claims. Informational pamphlets should be revised when reprinted. A brief supplemental form may be used.

It is possible that issues of citizenship and availability will arise during the claim series. These issues may arise as a result of the agency's claimstaking procedures--initial and continued claimstaking and eligibility interviews-- or from information provided by the Job Service or other sources. Similarly, separation issues may arise when an employer discharges a worker who fails to provide documentation of citizenship or work authorization within the time period required by law.

When issues arise, the agency should follow normal fact-finding procedures. If there is a question as to citizenship status, the agency should require the individual to provide sufficient documentation of his right to work. Subject to the terms and conditions of the Secretary's waiver determination(s), SESA(s) may be required to implement all or part of the verification requirements of Sections 1137(d)(2)-(5), SSA.

As with any request for information, the agency should then give the individual a reasonable amount of time to provide such information before issuing a determination affecting eligibility for benefits. If the individual fails to provide the documentation, then the agency would handle the claim as it would any other failure to provide required information.

E. Question. How should SESAs respond to INS requests for State UI data?

Answer. SESAs should cooperate with INS requests for UI data in order to assist the INS in making amnesty decisions under the provisions of Section 201, IRCA, provided State law permits such release of information. In cases when the SESA shares State UI data with the INS, the reasonable costs to the SESA in providing this data must be reimbursed to the SESA by the INS.

5. **Action Required.** SESAs are requested to:
  - a. Review State procedures and claims forms to ensure they are consistent with the requirements of Sections 3304(a)(4) and (14), FUTA, IRCA, and Sections 303(a)(5) and 1137(d)(1)-(5), SSA.
  - b. Review the UI-Job Service linkage to assure prompt exchange of information regarding an alien claimant's work status during the claims period.
  - c. Review State laws and regulations to determine if the SESA can legally provide SESA UI information to the INS upon request and on a reimbursable basis for reasonable SESA costs.
6. **Inquiries.** Questions should be directed to the appropriate ETA Regional Office.