

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 15-12

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES *Jane Oates*
 Assistant Secretary

SUBJECT: Unemployment Insurance Demonstration Projects under Section 2102 of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96).

1. **Purpose.** To provide guidance to states on how to apply for, and the requirements for approval of, demonstration projects provided in Title II of the Middle Class Tax Relief and Job Creation Act of 2012, which is officially named the Extended Benefits, Reemployment, and Program Integrity Improvement Act.
2. **References.** Sections 3304(a)(4) and (a)(5) of the Federal Unemployment Tax Act (FUTA); Sections 303(a)(1) and (a)(5) of the Social Security Act (SSA); Title II of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96); Section 2102 of the Extended Benefits, Reemployment, and Program Integrity Improvement Act (Title II, P.L. 112-96).
3. **Background.** The Middle Class Tax Relief and Job Creation Act of 2012 provides a unique opportunity to pilot new and innovative strategies to better help connect unemployed Americans with work. Specifically, Section 2102 of the Extended Benefits, Reemployment, and Program Integrity Improvement Act (Act) enacts a new Section 305, SSA, which allows the Secretary of Labor (Secretary) to enter into agreements with up to 10 states that submit applications for approval to conduct demonstration projects to test and evaluate measures to expedite reemployment of certain individuals found eligible for unemployment compensation (UC), or to improve the effectiveness of a state in carrying out its state law with respect to reemployment.

If necessary to carry out these demonstration projects, states may be granted approval to temporarily waive certain Federal law requirements. Waivers are further discussed in paragraph 6.

In addition, Section 305(h), SSA, as enacted, permits states to use UC administrative grant funds to administer an approved demonstration project. As there were no appropriations for

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this purpose, no additional funds are available under Section 305, SSA, to states conducting these demonstration projects.

The Secretary may approve a demonstration project for up to three years; however, the state must provide assurances that it will operate the project for at least one year. Such projects may begin at any time after approval of the project by the Secretary, but must be completed no later than December 31, 2015.

This Unemployment Insurance Program Letter (UIPL) is issued to advise states of the purposes for which a demonstration project may be approved, the requirements for a complete application, activities that may be pursued under a demonstration project, the requirements for obtaining a waiver of the withdrawal standard or methods of administration requirements in existing law, and the requirements for evaluation of the demonstration projects.

4. Goals of Demonstration Projects.

Section 305(a)(1), SSA, as enacted, establishes two purposes for which the Secretary may grant approval for states to conduct demonstration projects:

- a. To test and evaluate measures designed to expedite the reemployment of individuals who establish a benefit year and are otherwise eligible to receive UC “under the State law of such state [the state submitting the application]”; or
- b. To improve the effectiveness of a state in carrying out its state law with respect to reemployment.

The first purpose is limited to individuals who are eligible for UC under state law. This means that the target population for the demonstration is limited to individuals currently eligible for regular compensation, extended benefits (EB), or, in the states that pay them, additional benefits (AB), as those are the only types of UC payable under state law. Individuals currently eligible for UC under state law may be enrolled in a demonstration project even though they may become eligible for EUC during their participation in the project. Individuals who reside in a state but are receiving benefit payments from a UC program paid under another state’s law may not participate in a project operated by their state of residence. This limitation applies to individuals with a combined wage claim or an interstate claim who are being paid UC under the law of another state. However, states operating a demonstration project may include individuals with a combined wage claim or interstate claim who are receiving UC under the law of the state operating the demonstration project even if they live in another state. Unemployed individuals who have no entitlement to UC likewise may not participate in projects under this section. Note that these exclusions are consistent with the requirement, explained below, that the demonstration projects must result in no net cost to a state’s account in the unemployment trust fund (UTF) by the conclusion of the demonstration project.

The second purpose refers to a state carrying out its state law with respect to reemployment. The state law referred to is the state’s UC law. Thus, demonstration projects testing and evaluating this purpose are limited only to improving the state’s effectiveness, with respect to

reemployment, of carrying out its law for individuals eligible for regular compensation, extended compensation (EB), and, in the states that pay them, additional compensation (AB). The exclusions described above also apply here.

5. Types of Demonstration Projects Permissible.

Under Section 305(e), activities under an approved demonstration project are limited to:

- a. Subsidies for employer-provided training, such as wage subsidies; or
- b. Direct disbursements, not to exceed the weekly benefit amount of an individual, to employers who hire individuals receiving UC to pay part of the cost of wages that exceed the individual's prior benefit level.

Subsidies for employer-provided training could include on-the-job training or other work-based training programs. Note that the direct disbursement to employers is only permissible if the individual's wages in reemployment exceed such individual's prior UC weekly benefit amount (WBA) and may only be used to pay the difference between the weekly wages and the individual's WBA. For example, if an individual's WBA is \$300 and the wages are \$400, the disbursement could be no more than \$100, the amount by which the wages exceed the WBA. However, if the wages are \$700 or greater than that amount, the disbursement would be capped at \$300 since the WBA was \$300.

6. Waiver Options.

Under Section 305(c), SSA, the Secretary is authorized to waive provisions of Federal law regarding the withdrawal standard in Section 3304(a)(4), FUTA, and in Section 303(a)(5), SSA, and, the "methods of administration" requirement in Section 303(a)(1), SSA, for states with approved applications to conduct demonstration projects. The waiver may be only to the extent, and for the period, necessary to enable the state to carry out the demonstration project. States that are granted waivers of any of these provisions will be monitored to ensure compliance with the required elements of the application, as well as to monitor effects of the demonstration project on spending in the state's account in the UTF and any impact on UI program performance.

The Secretary has determined that she will not exercise her discretion under Section 305, SSA, to waive the requirement under Section 303(a)(1), SSA, that states make payment of UC when due. Thus, states granted approval to conduct a demonstration project must continue to make payment of UC when due to individuals. This requirement does not apply to the disbursements or subsidies made to the employers who participate in the demonstration projects.

While states may request a waiver of the "methods of administration" requirement of Section 301(a)(1), the Secretary strongly encourages states to use their existing staffing and organizational structures to operate their demonstration projects. The goal of these demonstration projects is to produce and test readily replicable and sustainable reforms to the UI system. Projects built on existing staffing and organizational infrastructures are more likely to achieve this goal.

7. Statutory Application Requirements.

This section discusses the statutory requirements for the contents of applications and our interpretation of what information a state must provide in its application to meet those requirements. An application that does not include these provisions will not be considered complete. A complete application must, consistent with Section 2102 of the Act, be submitted by the state's governor, and contain the following information:

- a. A general description of the proposed demonstration project, including:
 - Information on what measure or model is being tested;
 - Information on the design of the demonstration;
 - The period of time during which the demonstration project will be conducted; and
 - A project plan that includes a timeline for development, the anticipated date that the demonstration project will begin to enroll participants, and major milestones for activities and ongoing monitoring;
- b. A general description of the explicit authority under the laws of the state for the state to conduct the proposed demonstration during the entire period of time that the state proposes to operate the demonstration project. States must include a copy of the relevant provision in state law providing explicit authority or an official opinion demonstrating that the state has such authority via interpretation;
- c. If a waiver of the withdrawal standard or methods of administration requirement is requested, the application must include the following:
 - A statement of which provisions of Federal law the state is requesting authority to waive;
 - A statement of the specific aspects of the demonstration project to which the requested waiver would apply and an explanation of why the waiver is necessary to the success of the demonstration project; and
 - A description of the provisions of state law that allow (or will be amended to allow) the state to make withdrawals from the state's account in the UTF if the Secretary grants the requested waiver as part of her approval of the demonstration project;
- d. A description of the goals and expected programmatic outcomes of the project, including a description of how the demonstration project is designed to expedite reemployment of the state's UC claimants, or how the demonstration project would improve the effectiveness of the state's UC law in promoting reemployment of its UC claimants;
- e. Assurances, with supporting analysis, that the project will operate for a least one calendar year, and that the state's evaluation of the project will cover the entire period of the demonstration project;
- f. Assurances, with supporting analysis, that the demonstration project will not result in any increased net costs to the state's account in the UTF from the time the demonstration is implemented to the conclusion of the demonstration, including:

- The state's analysis that is the basis for asserting no increased net costs to the state's account in the UTF (see details at paragraph 10.); and
 - A description of the mechanism for continuous review of trust fund status to ensure no increased net costs to the state's account in the UTF at the conclusion of the demonstration project and the process the state will use if actual experience during the demonstration indicates there is a net cost to the state's account in the UTF;
- g. A description of the way in which the state will conduct an impact evaluation to determine the effects of the project on individual skill levels, earnings, and employment retention, including:
- Who will conduct the evaluation: state personnel or contractor;
 - If a contractor will do the evaluation, how the contractor will be selected;
 - A detailed description of the methodology and design of the evaluation (see details at paragraph 11.);
 - The data the state will collect as part of the demonstration project to support the evaluation, including proposed metrics for evaluating the success of the demonstration project; and
 - The source of funding to conduct the evaluation and the anticipated cost;
- h. A description of the way in which the state will determine the extent to which the goals and outcomes described in its application were achieved, including what data the state will collect and report to measure outcomes specific to the demonstration project in addition to those that will be required by the Secretary;
- i. States must propose what information they will collect and report, and a reporting format, to allow the Secretary to monitor progress of the demonstration project and to determine if it is adhering to the requirement that it will not result in any increased net costs to the state's account in the UTF;
- j. Assurances that the state will provide such reports as the Secretary, after approval of the demonstration project, may require; and
- k. Assurances that employment in the demonstration project meets the state's suitable work requirement in state law and the requirements of Section 3304(a)(5), FUTA. Employment that does not meet the requirements of the Fair Labor Standards Act will not be considered suitable work.

8. Secretary's Priorities.

The Secretary is committed to finding new and innovative ways to help America's job seekers, and supports the goals of these demonstration projects to test and evaluate cost-effective strategies to expedite reemployment in good jobs. The Secretary has discretion whether to enter into an agreement with a state to conduct a demonstration project and discretion to choose among proposed demonstration projects. This section provides guidance to states about the Secretary's priorities in exercising her discretion. These selection criteria below will be considered when reviewing state applications. States should include the following in their application:

- a. A description of stakeholder outreach and engagement that was open and inclusive with regard to the development of the demonstration project that includes steps states used to get stakeholder and public input (public hearings, meetings, webinars, or other strategies); a specific description of stakeholder consultation on the potential short-term impact on the solvency of the state's account in the UTF and any potential impact on state unemployment tax rates; and a summary of comments and input received and how the state incorporated the comments and input into their demonstration proposal;
- b. A description of employer engagement and participation—and, where applicable, the participation of any labor representatives—in the design and operation of proposed projects, with preference for projects with greater employer buy-in and participation, such as partial employer funding for subsidies, participant retention agreements, credentialing agreements, etc.;
- c. A description of the infrastructure (staffing, information technology system(s), monitoring, etc.) the state plans to use to implement the demonstration project; an assurance that the state will utilize existing workforce and UI system infrastructure; and assurance the staffing of the project ensures that UC claimants will receive fair and impartial assistance;
- d. A description of how the participating employers in the proposed demonstration project will meet the requirements of the Fair Labor Standards Act (FLSA) for participating individuals that they employ. For demonstration projects proposing employer-provided training, employers must comply with the FLSA minimum wage and overtime requirements unless the employer-provided training meets the six-part trainee test under the FLSA. See, *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947) and Employment Standards Admin., U.S. Dep't of Labor, *Employment Relationship Under the Fair Labor Standards Act*, WH Pub. 1297 (Rev. May 1980), available at: http://www.osha.gov/pls/epub/wageindex.download?p_file=F11973/WH1297.pdf; FOH ¶10b11(b).
- e. An assurance that the jobs into which the demonstration project places participants are designed to lead to permanent employment in good jobs;
- f. A description of how the demonstration project will affect the UC entitlement of an individual participant;
- g. Assurances that the demonstration project will include these additional worker protections:
 - All individuals' participation in the program will be voluntary;
 - An employer will not use a program participant to displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or benefits) any current employee as of the date of participation;
 - Employer participants may not permit a program participant to perform work activities related to any job for which:
 1. Any other individual is on layoff from the same or substantially equivalent position;

2. The employer has terminated the employment of any employee or otherwise reduced the workforce of the employer with the intention of filling or partially filling the vacancy so created with the work activities to be performed by a program participant;
 3. There is a strike or lockout at the worksite that is the participant's place of employment; or
 4. The job is created in a manner that will infringe in any way upon the promotional opportunities of currently employed individuals as of the date of participation;
- h. Assurance that the state will consider the viability of employer businesses when considering them for participation in the demonstration project in order to promote permanent jobs for the participants; and
 - i. Assurance that the state will develop processes for auditing and monitoring employer participants and will require employer participants to make their payroll and personnel records available for audit.

Additional priorities the Secretary will consider in reviewing applications include:

- a. The rigor of the evaluation design of the proposed demonstration project, with a strong preference for evaluations that use random assignment and are designed to contribute to a better national understanding of effective reemployment models;
- b. The variety of approaches in state applications (for the purposes of better nationwide evaluation of new methods, the Secretary may seek to approve a diverse collection of projects to compare results against a larger variety of demonstrations);
- c. Diversity of state applications across a range of state factors the Secretary may identify;
- d. Proposed goals and outcomes benefitting populations most in need of assistance in the state, such as low-income participants, older workers, workers in industries suffering high levels of unemployment, etc.;
- e. Strength of the application's analysis of impacts on the state's account in the UTF, including evidence, both contained in the application as well as other sources of information available to the Secretary;
- f. Information available to the Secretary on the solvency of the state's account in the UTF;
- g. Strong recent state performance with respect to UC performance measures; and/or
- h. Any other factors the Secretary deems appropriate.

9. Other Federal and State Law Requirements.

While the Secretary may grant a waiver of the provisions of Sections 3304(a)(4), FUTA, and 303(a)(1) and (5), SSA, the Secretary has no authority to waive any other provision of Federal

law applicable to participants in a demonstration project. Examples of other Federal law requirements that must be met include:

- a. States must ensure that all demonstration project participants who are working are paid in compliance with the Fair Labor Standards Act (29 USC 201 et seq.) and the work or training complies with other applicable state or Federal employment laws;
- b. States must continue to ensure that all state law benefit payments to individuals, including those to individuals in training under the demonstration project, be made “when due” and consistent with 20 CFR Parts 640 and 650, and to meet other UC program performance standards established by the Department while operating the demonstration project;
- c. States must continue to meet their obligations under Title XII, SSA, and other applicable laws and implementing regulations to repay any advances made to the state under Title XII, SSA, and interest owed or accruing on those advances;
- d. States must not use administrative funding to operate the demonstration project in amounts that leave insufficient funds for administration of core UC functions and that would prevent making payment of UC “when due”; and
- e. Other than activities related to developing and submitting a demonstration application, states may not use any of their administrative funding under Section 302(a), SSA, for any demonstration project activities conducted before the date the application to conduct a demonstration project was approved.

10. Analysis of Net Impact on State’s Account in the Unemployment Trust Fund (UTF).

The application for demonstration project approval must include a rigorous supporting analysis providing quantitative evidence that the demonstration project will not result in an increase in net costs to the state’s account in the UTF. A state that has outstanding advances must explain in the analysis how its demonstration project will not affect its ability to make interest and principal repayment, and must take its repayment obligations into account in the analysis.

The analysis should provide projections of the state’s UTF account balance at the conclusion of the demonstration project and any additional time periods that might be pertinent due to increased revenue resulting from employment retention, versus the account balance for the same measurement period absent the demonstration. Analyses should rely on historical data and projections for pertinent variables and include the following historical data and projections:

- Projected withdrawals from the UTF above and beyond regular UC payments to fund demonstration projects;
- Projected duration of benefits for demonstration project participants;
- Projected number of UC claimants who will participate in the demonstration project;
- Projected placement rates of UC claimant participants; and
- Projected weeks of benefit savings due to faster reemployment of UC claimant participants.

Analyses should contain a complete list of assumptions used and justification for those assumptions. If the results of research studies are used, the citation for the particular information

used must be provided. Methods used for estimating and projecting must be clearly explained and the analyses should be presented in a format easy to follow and understand.

11. Evaluations of the Demonstration Projects.

Requirement for States to Conduct an Evaluation. An application for approval to conduct a demonstration project must include a description of the manner in which the state will conduct an impact evaluation using a methodology appropriate to determine the effects of the demonstration project, including the effect on individuals' skill levels, earnings, and employment retention. If the state requests and receives a waiver to utilize funds from the state's UTF account to pay for the demonstration, these funds may also be used to pay for the evaluation as long as the cost of the evaluation is included in the calculation that there is no net impact on the trust fund.

The Department considers the most appropriate methodology to conduct an impact evaluation as one that employs a random assignment methodology. A random assignment methodology is the most rigorous approach to determining the impacts of a new intervention or service and is the approach that will give an unbiased estimate of the effectiveness of the demonstration project and its impact on the state's account in the UTF. States may submit alternative approaches for their impact evaluation, but since the level of technical rigor of the evaluation is a critical component of the state's application, those with experimental random assignment evaluation designs with treatment and control groups will be favored. States approved to conduct a demonstration project must engage a qualified evaluator to conduct the net impact evaluation. The application must contain a clear description of the evaluation methodology, including: clearly defining the universe of individuals who will be potentially eligible for the new treatment or service under the demonstration; the number of individuals the state plans to serve in the demonstration project (in both the treatment and control groups); how those individuals would flow through the new intervention or service from program entrance to program exit; procedures for conducting random assignment; criteria for inclusion in the treatment and control groups; mechanisms for tracking the progress of the treatment and control groups during and after the demonstration; metrics for measuring outcomes; and how the state will evaluate the ultimate impact on the state's account in the UTF.

National Evaluation. States entering into an agreement with the Secretary to conduct a demonstration project must participate with the Department in a national evaluation sponsored by the Department. At a minimum, the Department will conduct a structured implementation analysis of all states operating a demonstration project with cross-site analysis that includes analysis of the individual-level data collected by the states on the treatment and control groups. This evaluation will measure net impacts on individuals and impacts on states' accounts in the UTF for all states operating a demonstration project.

States must, consistent with Sections 303(a)(6) and 305(b)(6), SSA, agree to make available to the Department's evaluator(s) all data for both the treatment and control groups, including confidential UC wage records and claimant files according to guidelines that will be provided by the Department (depending in part on the type of demonstration project the state will conduct). States will be required to keep and safeguard personally identifiable information on each demonstration project participant in the event that the Department wishes to link demonstration project participant data with other state or Federal administrative data systems. States must also agree to provide access to demonstration project operating personnel and participants, as

specified by the evaluator(s) under the direction of the Department, including after the expiration date of the demonstration project.

12. Reporting and Data Collection Requirements.

Additional reporting will be required of state agencies approved to implement demonstration projects. Section 305(b)(6), SSA, requires that a state, as part of its application for approval to conduct a demonstration project, provide assurances that it will provide any reports relating to the demonstration project that the Secretary requires. Reporting requirements will be customized to the specific state demonstration project and will be developed, in part, using reporting recommendations in the state's application. States are asked to propose specific data collection that will provide participation data, outcome information, and information that will support their evaluation methodology. The Secretary reserves the right to provide additional reporting instructions after approval of the project.

The Department anticipates the following types of reporting and data collection:

- Quarterly reports that include aggregate data on participants and project outcomes, as well as a narrative description of demonstration project implementation and activities. The Department expects the data to include, at a minimum, demonstration project participation numbers and durations, participant and employer benefit and subsidy payment information, data on participation in training including any outcome information on permanent hires and wages, and retention. Attachment 1 includes a proposed quarterly reporting format. States must also propose specific quarterly aggregate data reporting plans in their applications, as required in Section 7;
- State quarterly reports that must include information to enable the Secretary to assess if the demonstration project is adhering to the requirement that it will not result in any increased net costs to the state's account in the UTF, including, but not limited to, the amount withdrawn from the UTF on a periodic basis, including a quarterly comparison of the account balance with and without the operation of the demonstration project for the measurement period. The quarterly reports also must include sufficient information to enable the reviewer to computationally match results, which should include the following:
 - Actual withdrawals from the UTF above and beyond regular UC payments to fund demonstration projects;
 - Actual duration of benefits for demonstration project participants;
 - Actual number of UC claimants who have participated in the demonstration project;
 - Actual placement rates of project participants; and
 - Estimated actual weeks of benefit savings due to faster reemployment of demonstration project participants;
- Maintenance of individual records by the state on demonstration project participants for use in the state's and the Department's evaluations of the demonstration project. Attachment 2 to this UIPL outlines the basic data elements that the Department expects states will need to collect for evaluation purposes; however, the elements could vary by demonstration project design. States must propose specific data collection plans in their applications that will support their evaluation methodology, as required in Section 7.

Attachments 1 and 2 provide more detailed information on the required data collection and reporting requirements that states must collect at a minimum. The Secretary reserves the right to provide additional reporting instructions after approval of the demonstration project. The Department will provide technical assistance on the reporting requirements to support states when submitting their applications and when states are selected to implement a demonstration project.

13. Application Process.

For a state to be approved to be one of the up to 10 states with which the Secretary may enter into an agreement, a complete application must be submitted to the Department in accordance with the instructions provided in paragraph 14. A complete application must contain all of the information required by the statute, as detailed in paragraph 7 above.

By statute, the Department has 30 days from the date a complete application is received within which to approve or deny the application. The 30-day period begins on the day following actual receipt of a complete application. Any application that is neither approved nor denied within 30 days will be deemed approved.

The Department will begin accepting applications upon release of this guidance, though states are encouraged to take sufficient time to thoughtfully develop their applications in consultation with key stakeholders and to ensure they include all required information. If an application is incomplete or has been denied, a state may submit a later application for consideration by the Secretary as long as fewer than 10 states' applications to conduct demonstration projects have been previously approved.

Applications will first be reviewed for completeness, that is, to ensure that all of the required provisions detailed in paragraph 7 are included, and incomplete applications will be returned before 30 days of their receipt indicating the missing elements. Only those complete applications will be reviewed to determine whether and to what extent a state has incorporated the Secretary's priorities into its planned demonstration project. Because the Secretary seeks diversity in geographic areas, size of populations served, and participant characteristics, some applications may not be approved initially.

Upon receipt of a complete application submitted in accordance with this guidance, an initial review panel will evaluate the application to ensure all of the required information, analyses, and assurances are included in the application, as well as determine that the proposed demonstration project design is consistent with the statutory limitations described throughout this UIPL. Any application that does not contain the required information, analysis, and assurances, or that is proposing a project outside the statutory limitations on the activities that may be pursued under Section 305, SSA, will be denied.

Since all demonstration projects must be operated by the state for at least one year, and the demonstration project must be completed no later than December 31, 2015, all applications must be received no later than October 31, 2014, to allow sufficient time for the Secretary's review and the signing of the Secretary-Governor agreement. When states submit applications they should take into consideration any lead time necessary, after notification of the Secretary's

approval, to begin operations. Thus, to meet the one-year requirement, a state may need to submit an application much sooner.

To assist states in developing their application, a checklist is attached (Attachment 3).

Applications must be signed by the state's Governor and addressed to:

Gay Gilbert
Administrator
Office of Unemployment Insurance
200 Constitution Avenue, NW
Room S4524
Washington, DC 20210

States are strongly encouraged to submit applications by fax or email (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 FedEx or UPS. States may fax applications to 202-693-2874 to the attention of the Division of Legislation. Email submissions should be sent to the following email address: UIDemos@dol.gov. Copies should be provided to the appropriate Regional Office. For purposes of determining date of receipt, the date the application is received in the National Office shall be used. Applications sent only via the U.S. Postal Service may be delayed due to security precautions with mail coming into the Department.

States whose proposed applications to conduct a demonstration project are approved must enter into an agreement with the Secretary to operate the demonstration project as set out in paragraph 14. All state applications and the Secretary's response approving or denying an application will be posted on the Department's website.

14. Agreements. States whose applications to implement a demonstration project are approved must enter into an agreement with the Secretary to be signed by the Governor or the Governor's designee, as evidenced by a fully executed current certification of authority. The agreement will require states to adhere to this guidance and incorporate the state's proposal and project plan. Additional elements of a state agreement may be determined based on the states' proposed demonstration project. The agreement will be finalized within 30 days following approval of a demonstration project. The Secretary reserves the right to terminate approval of a demonstration project if the state and the Department cannot reach agreement on the terms of the agreement. Attachment 4 is a Model Agreement that will be customized based on the state's proposed demonstration.

15. Termination of Demonstration Projects.

Section 305(g), SSA, provides the Secretary with authority to terminate a demonstration project if the Secretary determines that the state has violated the substantive terms or conditions of the project or of the agreement. The Secretary reserves the right to terminate demonstration projects for these reasons immediately upon written notification to the state.

16. Technical Assistance.

The Department will host webinars to provide technical assistance to states interested in conducting a demonstration project. As authority for these projects is limited to up to 10 states, the Department will not provide customized assistance to individual states as they prepare their applications for submission.

17. Action Required. State administrators should distribute this advisory to appropriate staff.

18. Inquiries. Questions should be addressed to your Regional Office.

19. Attachments.

Attachment 1: Demonstration Quarterly Report Requirements

Attachment 2: Collection of Individual Data Elements for Demonstration Participants

Attachment 3: Middle Class Tax Relief and Job Creation Act of 2012 Unemployment Insurance Demonstration Projects Application Checklist

Attachment 4: Model Demonstration Agreement

Attachment 1

DEMONSTRATION QUARTERLY REPORT REQUIREMENTS

Below is a description of the aggregate data states are expected to report on a quarterly basis for all claimant and employer participants in the demonstration project, as well as trust fund information, and a project narrative. The Department of Labor will negotiate additional quarterly reporting elements that are demonstration specific upon the approval of a state's demonstration project.

Aggregate Claimant Participation Information

1. Total number of participants enrolled in the demonstration to date
2. Number of participants enrolled during the quarter
3. Total number of participants exiting participation to date (reasons to be identified depending on the nature of the demonstration)
4. Number of participants exiting participation during the quarter (reasons to be identified depending on the nature of the demonstration)

Aggregate Employer Participation

1. Total number of employers participating in the demonstration to date
2. Number of employers first participating during the quarter

Aggregate Participant Outcome Information

1. Outcomes - Employment
 - Employed in 1st, 2nd, 3rd, and 4th Quarter After Exit
 - Occupational/Industry Code of Employment
2. Outcomes - Wages
 - Wages 1st and 3rd Quarter Prior to Participation
 - Wages 1st, 2nd, 3rd, and 4th Quarter after Exit
3. Outcomes - Retention
 - Of those Employed in the 1st Quarter after Exit, still employed in 2nd, 3rd, and 4th Quarter
 - Occupational/Industry Code of Employment

Trust Fund Impact Information

1. Actual withdrawals from the UTF above and beyond regular UC payments to fund demonstration project;
2. Actual duration of benefits for demonstration project participants;

3. Placement rates of project participants;
4. Actual weeks of benefit savings due to the faster reemployment of demonstration participants.

Demonstration Implementation Narrative

States are required to provide a narrative overview of demonstration activities during the quarter, including status of implementation milestones provided in the state's application.

Additional Demonstration Specific Aggregate Information

Additional data elements will be identified for the state's quarterly report based on the structure and design of the state's demonstration.

Collection of Individual Data Elements for Demonstration Participants Treatment Group (Demonstration Participants) and the Control Group (Non-Participants)¹
<p>Below are data elements that demonstration states are expected to collect and retain on participants to support the state's and the Department of Labor's evaluation of the demonstrations. States are not required to report individual data to the Department as part of the regular quarterly report submission. The data elements below are marked required if the data elements are not demonstration specific. Data elements that are dependent on the demonstration design will be negotiated with each demonstration state.</p>
<p>Baseline Characteristics (Required)</p> <ol style="list-style-type: none"> 1. Background Characteristics <ul style="list-style-type: none"> • Age, Gender, Race/Ethnicity • State, County, Zip Code of Residence • Highest Educational Attainment 2. Pre-Program Labor Market Experience <ul style="list-style-type: none"> • Date of Employment Separation • UC Eligibility/Status • O*NET Code for Most Recent Employment • FEIN of Most Recent Employment
<p>Participant Information (Required)</p> <ol style="list-style-type: none"> 1. Participation Information <ul style="list-style-type: none"> • Date of Eligibility Decision/Referral to Program • First Date of Participation • Date of Exit 2. Benefits and Services Information – UC Payments <ul style="list-style-type: none"> • Date of First UC Payment • Duration/Amount of UC Paid
<p>Services Delivery Information (To Be Customized Depending on the State's Approved Demonstration)</p>
<ol style="list-style-type: none"> 1. Benefits and Services Information – Training <i>(if applicable to the approved</i>

¹ *Element Definitions and Code Values Mapped to
Either the WIASRD or TAPR Data Reporting Systems*

<p><i>demonstration project)</i></p> <ul style="list-style-type: none">• Date Entered Training• Date Completed Training• Date Withdrew from Training• O*NET Code for the Training• Credential Attainment• Training Expenditures• Duration/Amount of Subsistence Provided While in Training <p>2. Benefits and Services Information – Direct Employer Disbursements (<i>if applicable to the approved demonstration project)</i></p> <ul style="list-style-type: none">• Date of First Direct Employer Disbursement• Duration/Amount of Direct Employer Disbursement <p>3. Benefits and Services Information – Wage Subsidy (<i>if applicable to the approved demonstration project)</i></p> <ul style="list-style-type: none">• Date of First Wage Subsidy Payment• Duration/Amount of Wage Subsidy Paid
<p>Individual Participant Outcomes (required)</p> <p>1. Outcomes - Employment</p> <ul style="list-style-type: none">• Employed in 1st, 2nd, 3rd, and 4th Quarter After Exit• Occupational/Industry Code of Employment <p>2. Outcomes - Wages</p> <ul style="list-style-type: none">• Wages 1st and 3rd Quarter Prior to Participation• Wages 1st, 2nd, 3rd, and 4th Quarter after Exit <p>3. Outcomes - Retention</p> <ul style="list-style-type: none">• Of those Employed in the 1st Quarter after Exit, still employed in 2nd, 3rd, and 4th Quarter• O*NET Code for the Employment

**Middle Class Tax Relief and Job Creation Act of 2012
Unemployment Insurance Demonstration Projects
Application Checklist**

This tool is provided to states for use before submission of an application for a demonstration project pursuant to Section 2102 of the Middle Class Tax Relief and Job Creation Act of 2012 to ensure that a state's application is complete when submitted to the Secretary of Labor. The use of the tool is not mandatory.

Checklist Item	Y	N	Remarks
Statutory Application Requirements <i>UIPL 15-12, Section 7</i>			
1. Narrative description of the proposed demonstration project, including: <ul style="list-style-type: none"> • The measure or model to be tested. • Information on the design of the demonstration. • The time period of the demonstration project. 			
2. A detailed project plan, including: <ul style="list-style-type: none"> • A development and implementation plan with schedule, including anticipated date of first enrollments. • A description of milestones and deliverables. • A plan for ongoing monitoring. 			
3. Description of the authority under state law to undertake the demonstration project and operate it during the entire proposed period of the demonstration, including: <ul style="list-style-type: none"> • A copy of the relevant provisions of state law, OR • An official opinion that the state has authority via interpretation. 			
4. "Withdrawal standard" waiver request, if applicable, including: <ul style="list-style-type: none"> • A statement of which provisions of Federal law the state is requesting authority to waive. • A statement of the specific aspects of the project to which the requested waiver would apply. • An explanation of why the waiver is necessary. • A description of the provisions of state law or an official opinion interpreting state law that the state identifies as authorizing it to make withdrawals from the state's account in the UTF if the Secretary grants the requested waiver as part of her approval of the demonstration project. 			
5. "Methods of administration" waiver request, if applicable, including:			

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<ul style="list-style-type: none"> • A statement of which provisions of Federal law the state is requesting authority to waive. • A statement of the specific aspects of the project to which the requested waiver would apply. • An explanation of why the waiver is necessary. • A description of the provisions of state law or an official opinion interpreting state law that the state identifies as authorizing it to make withdrawals from the state's account in the UTF if the Secretary grants the requested waiver as part of her approval of the demonstration project. 			
<p>6. Description of goals and outcomes of the project, including:</p> <ul style="list-style-type: none"> • How the demonstration project will expedite reemployment of state UC claimants, OR • How the project would improve the effectiveness of the state's UC law in reemploying state UC claimants. 			
<p>7. Assurance, with supporting analysis, that the project would operate for a least one calendar year.</p>			
<p>8. Assurance, with supporting analysis, that the state's evaluation of the project will cover the entire period of the demonstration project.</p>			
<p>9. Assurance that the demonstration project, from beginning to end, will not result in any increased net costs to the state's account in the UTF, including:</p> <ul style="list-style-type: none"> • The state's detailed analysis that is the basis for asserting no net costs. • A mechanism for continuous review of trust fund status to ensure no net costs over the life of the demonstration project. • A description of what the state will do if experience during the demonstration indicates there is a net cost to the UTF. • A description of the proposed information the state will collect and report, including the reporting format, to allow the Secretary to monitor progress and ensure no net costs to the state's trust fund. 			
<p>10. A description of the state's plan to conduct an impact evaluation of the demonstration project to determine the project's effects on individual skill levels, earnings, and employment retention, including:</p> <ul style="list-style-type: none"> • Information on who will conduct the evaluation. • Information on how the evaluator will be selected. • A detailed description of the methodology and design of the evaluation. 			

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<ul style="list-style-type: none"> Detailed information on the data the state will collect to support the evaluation. The costs and source of funding of the evaluation. 			
11. A description of performance measures for goals and outcomes, including the planned data collection for measuring outcomes, in addition to those required by the Secretary.			
12. Assurance that the state will provide any reports required by the Secretary.			
13. Assurance that employment in the demonstration project meets the state's suitable work requirement (including that the employment will meet the requirements of the Fair Labor Standards Act of 1938, 29 USC 201 et seq.) and the labor standards requirement set out in section 3304(a)(5), FUTA.			
14. Application signed and dated by the Governor.			
Supporting Information for the Secretary's Priorities			
<i>UIPL 15-12, Section 8</i>			
15. A detailed description of stakeholder outreach and engagement, including: <ul style="list-style-type: none"> Engagement in the development of the demonstration project including steps to obtain stakeholder and public input such as public hearings, meetings and webinars. Consultation on the potential short-term impact on the state's trust fund and UI tax rates. Summary of comments and input and how these are reflected in the proposal 			
16. A description of employer and labor representative (where applicable) engagement and participation in the proposed project, including explanations of employer buy-in and participation, such as partial employer funding for subsidies, participant retention agreements, credentialing agreements, etc.			
17. A description of the infrastructure (staffing, information technology system(s), monitoring, etc.) the state plans to use to implement the demonstration project.			
18. Assurance that the state will utilize and will not duplicate the existing system infrastructure to implement and/or administer the demonstration project.			
19. Assurance that the staffing of the project ensures that UC claimants will receive fair and impartial assistance.			
20. A description of how participating employers will meet the Fair Labor Standards Act standards for participants they employ.			
21. Assurance that the jobs and training into which the			

Attachment 3

demonstration places participants are designed to lead to permanent, good jobs.			
22. A description of how the demonstration project will affect the UC entitlement of an individual participant.			
<p>23. Assurance that the demonstration project will include each of the additional worker protection requirements of Section 8, Paragraph g, of this guidance:</p> <ul style="list-style-type: none"> • An individual's participation in the program will be voluntary; • An employer will not use a program participant to displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or benefits) any current employee as of the date of participation; • Employer participants may not permit a program participant to perform work activities related to any job for which: <ol style="list-style-type: none"> 1. Any other individual is on layoff from the same or substantially equivalent position; 2. The employer has terminated the employment of any employee or otherwise reduced the workforce of the employer with the intention of filling or partially filling the vacancy so created with the work activities to be performed by a program participant; 3. There is a strike or lockout at the worksite that is the participant's place of employment; or 4. The job is created in a manner that will infringe in any way upon the promotional opportunities of currently employed individuals as of the date of participation. 			
24. Assurance that the state will consider the viability of employer businesses when considering them for participation in the demonstration in order to promote permanent jobs for the participants.			
25. Assurance that the state will develop processes for auditing and monitoring employer participants and will require participant employers to make their payroll and personnel records available for audit.			

Attachment 3

<p>26. Agreement to participate in the national evaluation of the demonstration project, including:</p> <ul style="list-style-type: none">• Collection and maintenance of data elements prescribed by the Secretary.• Making available to the Department's evaluators all data for both the treatment and control groups as required.• Providing access to demonstration operating personnel and participants.			
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MODEL DEMONSTRATION AGREEMENT

NOTE: ADDITIONAL OR DIFFERENT ELEMENTS OF A STATE AGREEMENT MAY BE REQUIRED BASED ON THE STATE'S PROPOSED DEMONSTRATION PROJECT.

The Middle Class Tax Relief and Job Creation Act of 2012

AGREEMENT BETWEEN

THE STATE OF XXXXXX

AND

THE SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR

The Secretary of Labor, U.S. Department of Labor, hereinafter referred to as the "Secretary" of the "Department," and the State of XXXXXX, hereinafter referred to as "State," in order to carry out the provisions of Section 305 of the Social Security Act (the "SSA"), added by Section 2102 of the Middle Class Tax Relief and Job Creation Act of 2012, hereby agree as follows:

- I. The State will conduct the demonstration providing the benefits and services described in the application submitted and approved by the Secretary in accordance with Section 305, SSA.
- II. The State's application to the Secretary submitted under Section 305, SSA, and the letter from the Secretary approving that application, are attached to this agreement and incorporated herein. The proposed activities, costs, plan, outcomes, assurances, requirements and all other content contained in the application are incorporated and agreed to.
- III. The State agrees to comply with all regulations, operating instructions, and Unemployment Insurance Program Letters (UIPLs) relating to demonstrations approved by the Secretary in accordance with Section 305, SSA.
- IV. The State will maintain such records pertaining to the administration of the Act as the Department deems appropriate, and will make all such records available for inspection, examination, ongoing monitoring, and audit at such time and by such federal officials or employees as the Department may designate or as may be required by law to ensure compliance with the terms and conditions of the approved demonstration project.
- V. [PLACEHOLDER FOR ADDITIONAL REPORTING REQUIREMENTS BASED ON THE STATE'S PROPOSED DEMONSTRATION PROJECT]

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- VI. The State will furnish to the Department such information and reports and will fully participate in any studies and evaluations the Department determines are necessary or appropriate for carrying out the purposes of the Act, including the analysis to support the assurances in the State's application that the demonstration project will not result in any increased net costs to the State's account in the UTF during the period the demonstration is operated.
- VII. The demonstration will be subject to the waivers and the limitations on the waivers set out in the approved application.
- VIII. A determination by a State with respect to an individual's benefit payments provided by the State under the demonstration project will be subject to review in the same manner and to the same extent as determinations with respect to unemployment compensation under the State unemployment compensation law, and only in that manner and to that extent.
- IX. Section 305(g), SSA, provides the Secretary with authority to terminate a demonstration project if the Secretary determines that the State has violated the substantive terms or conditions of the project or of the agreement. The Secretary expressly reserves the right to terminate this demonstration project for these reasons immediately upon written notification to the State.
- X. If this Agreement is terminated by the Secretary, the State will process and make all demonstration project payments to any entity or individual for all demonstration activities that occurred through the date of termination, provided that such activities were conducted in accordance with the terms of the Agreement. In addition, if this Agreement is terminated, all matters concerning the administration of the demonstration and this Agreement in the State shall be concluded as soon thereafter as possible.
- XI. This Agreement may be modified by written agreement. A modification to this Agreement will be effective when both parties have signed the modification and, if applicable, the certification of authority.
- XII. This Agreement shall be effective when both parties have signed it.

**Secretary of Labor
U.S. Department of Labor**

By _____
(Governor of the State or the Governor's Designee as designated below)

(Title)

DATED: _____

For the State of _____

CERTIFICATION OF AUTHORITY

(To be completed only if the Governor is authorizing a designee to sign the agreement.)

NAME _____

TITLE _____

I hereby certify that the above-named person has the authority under the Constitution and laws of this State to sign this Agreement on behalf of the state.

Governor's Signature: _____

MODEL DEMONSTRATION AGREEMENT

NOTE: ADDITIONAL OR DIFFERENT ELEMENTS OF A STATE AGREEMENT MAY BE REQUIRED BASED ON THE STATE'S PROPOSED DEMONSTRATION PROJECT.

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THE STATE OF XXXXXX

AND

THE SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR

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- IV. The State will maintain such records pertaining to the administration of the Act as the Department deems appropriate, and will make all such records available for inspection, examination, ongoing monitoring, and audit at such time and by such federal officials or employees as the Department may designate or as may be required by law to ensure compliance with the terms and conditions of the approved demonstration project.
- V. [PLACEHOLDER FOR ADDITIONAL REPORTING REQUIREMENTS BASED ON THE STATE'S PROPOSED DEMONSTRATION PROJECT]

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Secretary of Labor
U.S. Department of Labor

By _____
(Governor of the State or the Governor's Designee as designated below)

(Title)

DATED: _____

For the State of _____

CERTIFICATION OF AUTHORITY

(To be completed only if the Governor is authorizing a designee to sign the agreement.)

NAME _____

TITLE _____

I hereby certify that the above-named person has the authority under the Constitution and laws of this State to sign this Agreement on behalf of the state.

Governor's Signature: _____