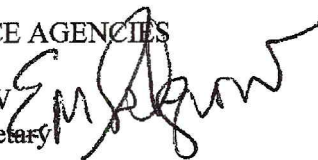


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| EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210 | CLASSIFICATION UI |
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| | DATE October 11, 2013 |

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 31-13

TO: STATE WORKFORCE AGENCIES

FROM: ERIC M. SELEZNOW
Acting Assistant Secretary



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

1. **Purpose.** To respond to questions from state workforce agencies and provide guidance about the Federal government shutdown and the Unemployment Insurance program, including Unemployment Compensation for Federal Employees (UCFE) and Emergency Unemployment Compensation (EUC).

2. **References.**

- Code of Federal Regulations, Title 20, Section 609.8(b)(1)(ii);
- UCFE Handbook No. 391 for State Agencies;
- Office of Personnel Management, *Guidance for Shutdown Furloughs*
[<http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf?nocache=1>];
- Office of Management and Budget Circular A-87.

3. **Background.** The failure of Congress to pass a budget by October 1, 2013, caused a lapse in appropriations for much of the Federal government, which in turn led to a partial Federal government shutdown. Many Federal workers, including some Congressional staff, were placed on “furlough” status. Because they are not performing services they are considered to be unemployed and may be eligible for unemployment insurance.

4. **Action Requested.** State Administrators should provide the information in this UIPL to appropriate staff.

5. **Inquiries.** Questions should be directed to Betty Castillo at Castillo.Betty@dol.gov or Candace Edens at Edens.Candace@dol.gov.

6. **Attachment.** Questions and Answers: Unemployment Insurance and the Federal Government Shutdown.

**Questions and Answers:
Unemployment Insurance and the Federal Government Shutdown**

A. Exempt and Excepted Federal Employees and Presidential Appointees

1. Question: What guidance is available to help Federal furloughed workers and states understand a federal employee's status during a shutdown?

Answer: The Office of Personnel Management has published the guidance for Federal workers regarding the impact of a shutdown at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.

2. Question: Employees are "exempt" from furlough if they are not affected by a lapse in appropriations. This includes employees whose salaries are funded with other than annually appropriated funds and continue to be paid during a government shutdown. Are full-time exempt employees eligible for UCFE benefits?

Answer: No. Employees are "exempt" from furlough if they are not affected by a lapse in appropriations. These employees will continue to work and be paid.

3. Question: Are full-time "excepted" employees eligible for UCFE benefits?

Answer: Employees are "excepted" if their salaries are funded through annual appropriations, but are nonetheless excepted from furlough because they are performing work that may continue to be performed during a lapse in appropriations. "Excepted" employees who remain on their jobs on a full-time basis are generally not eligible for unemployment benefits because states may determine that they are still fully employed. Excepted workers will not be paid for their work until Congress appropriates the funds.

4. Question: Are "excepted intermittent" employees eligible for UCFE benefits?

Answer: "Excepted intermittent" employees are similar to "excepted" employees, except that they are called in to work on an as-needed basis. Individuals classified as "Excepted Intermittent" employees are generally working less than full-time and may not be working at all. Therefore, they may be eligible for partial or full UCFE benefits depending on the hours of work or the amount of wages earned during the week. These employees will not be paid for their excepted work until Congress appropriates the funds.

5. Question: What about employees who are neither "excepted" nor "exempt"?

Answer: Workers who are not exempt and who are funded through annual appropriations but are not designated as excepted are barred from working during a shutdown except for minimal activities necessary for orderly shutdown. These employees have been furloughed and are eligible for UCFE under the same state requirements and conditions for other laid-off workers.

6. Question: Are leave-exempt Presidential appointees eligible for UCFE benefits?

Answer: No. Individuals appointed by the President, with or without Senate confirmation, who are not covered by the Federal leave system are not subject to furlough. A leave-exempt Presidential appointee cannot be placed on nonduty status. These individuals will continue to be paid during a government shutdown.

B. Required Documentation for UCFE Claims

1. Question: What documentation is acceptable from furloughed Federal employees as proof of employment and wages for a UCFE claim?

Answer: Normally, furloughed Federal employees should provide copies of the Standard Form-8 (SF-8) or the Standard Form-50 (SF-50) when filing for UCFE. However, due to the circumstances involved with the Federal government shutdown, many of these employees were not issued either the SF-8 or an SF-50. Further, given the very limited Federal human resources staff that is working during the shutdown, the processing of the states' *Request for Wage and Separation Information*, ES 931, may be delayed. Therefore, states are encouraged to have claimants complete an affidavit to establish their employment and wages using earnings and leave statement(s), W-2 forms, furlough notices, and/or other types of documentation that can establish that the individual is a current Federal employee and has worked and earned sufficient base period wages to qualify for benefits.

2. Question: Is there a specific affidavit form that states must use in taking these UCFE claims?

Answer: States may use either the Form ES-935, *Claimant's Affidavit of Federal Civilian Service, Wages and Reason for Separation* or their own affidavit form(s) in taking the UCFE claim. Form ES-935 can be found at <http://oui.doleta.gov/unemploy/>.

C. Work Search Requirements

Question: What work search requirements apply to furloughed Federal workers determined to be eligible for UCFE?

Answer. States should apply the work search provisions in accordance with state law and/or policy, including waivers of the work search requirements that may apply when a claimant remains work attached, but is only temporarily furloughed.

The Office of Personnel Management provided the following information to Federal employees in its *Guidance for Shutdown Furloughs* (see Question and Answer under *Working during a Furlough* - question C.3 in the *Guidance for Shutdown Furloughs*), which mentions requirements that may make it particularly challenging for Federal employees to seek other employment during a furlough period.

May employees take other jobs while on furlough?

A. While on furlough, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct (the standards), at 5 CFR part 2635). In addition, there are specific statutes which prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their agency ethics official to learn if there are any agency-specific supplemental rules governing the employee.

D. Furloughed Federal Employees Residing Outside the United States

Question: Are furloughed Federal employees working outside the U.S at the time of the furlough eligible for Unemployment Compensation for Federal Employees (UCFE) if they are unable to be physically present to file an unemployment claim in one of the states, the District of Columbia, Puerto Rico or the Virgin Islands?

Answer: No. Section 20 CFR 609.8(b) of Title 20 CFR provides:

(b) Assignment of service and wages.

(1) An individual's Federal civilian service and Federal wages shall be assigned to the State in which the individual had his or her last official station prior to filing a first claim unless:

(i) At the time a first claim is filed the individual resides in another State in which, after separation from Federal civilian service, the individual performed service covered under the State law, in which case all of the individual's Federal civilian service and wages shall be assigned to the latter State; or

(ii) Prior to filing a first claim an individual's last official station was outside the States, in which case all of the individual's Federal civilian service and Federal wages shall be assigned to the State in which the individual resides at the time the individual files a first claim, provided the individual is personally present in a State when the individual files the first claim.

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We interpret this regulation to require that individuals must be physically present in a state, the District of Columbia, Puerto Rico or the Virgin Islands in order to file a claim for Unemployment Compensation for Federal Employees.

E. Wage Garnishments for Overpayments

Question: Are states able to require a Federal agency to recover a benefit overpayment through wage garnishment for any employees overpaid UCFE, including in the event that a payment that was appropriate at the time paid becomes an overpayment because back pay is granted?

Answer. Yes. After providing claimants the opportunity for appeal and voluntary reimbursement, the state may, if state law requires employers to recover overpayments, request that a Federal agency garnish wages to recoup any overpayments. In these cases, the state should notify the Federal agency,

in writing, of its responsibility to collect the overpaid amount(s) from the employee (see UCFE Handbook No. 391, page V-5). States are strongly encouraged to remind Federal employee claimants that they will be required to repay unemployment benefits that are paid to them for wages lost during the furlough period that are later repaid.

F. Administrative Funding

1. Question: Can states continue to pay unemployment benefits if the state no longer has any administrative funding available?

Answer: Yes. States can, and are encouraged to, use other state resources to pay for the administration of UI program operations to prevent the disruption of UI benefit processing.

The Department will advise states as soon as possible about funding available for administrative costs associated with the government shutdown. Additional guidance will be provided to states once the government shutdown ends.

2. Question: If a state uses state resources to enable continued administration of the UI program after Federal administration funding for the program is exhausted, will the state receive full-year funding once a Federal appropriation for the program is enacted?

Answer: In prior government shutdowns, once a Federal appropriation was enacted, the appropriation provided for funding of the administration of the UI program to avoid a gap (i.e., funding was provided from the point in the fiscal year when the shutdown began). While there is not a guarantee, every effort will be made to ensure that funding for state UI administration will be provided as though a lapse in appropriations had not occurred.

3. Question: What Federal funding sources should states consider using to enable continued UI program operations in the event the state exhausts all available state UI administrative funding?

Answer: In the event that a state is approaching exhaustion of currently available state administration funding the state should immediately contact Gay Gilbert, Administrator, Office of Unemployment Insurance, at 202-693-3029 or Gilbert.Gay@dol.gov.

States are encouraged to identify other available funding sources that may be used for administration of the state's UI program such as Reed Act funds, other special distributions similar to Reed Act distributions that could be used for state administration of the program, and UI Modernization incentive funds. States are also encouraged to consider the use of penalty and interest funds for this purpose.

4. Question: Can states use EUC administrative funds to cover administrative costs for the regular UI program?

Answer. Administration of the EUC program has undoubtedly required some common use of existing physical resources (copiers, office space, phone lines, etc.), information technology

infrastructure, and states staff also used for administration of the state regular UI program. States should ensure that costs of these resources used for EUC administration are, to the extent possible under the cost allocation principles set forth in OMB circular A-87, charged to EUC administration. In doing so, states may help reduce pressure on available UI administrative funds.

G. Notification to Claimants If Benefit Payment Are Stopped Due to Lack of Administrative Funds

Question: If a state must stop paying benefits due to a lapse in administrative funding, what, if any, claimant notification is required?

Answer: States must make every effort to provide individual notification to claimants prior to stopping benefit payments. States are also strongly encouraged to ensure that notification is posted on state Web sites and in various state-wide media announcements. If possible, states should accept claims and encourage claimants to continue to certify continued claims for benefits even if payments cannot be issued. This would help to avoid work associated with backdating of claims once the administrative funding issue is resolved.