

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE October 24, 2013

ADVISORY: **UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 31-13,
Change 1**

TO: STATE WORKFORCE AGENCIES

FROM: ERIC M. SELEZNOW /s/
Acting Assistant Secretary

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

1. Purpose. To provide guidance related to the processing of UCFE claims filed by furloughed Federal employees during the October 1-16, 2013, Federal government shutdown.

2. References.

- Continuing Appropriations Act, 2014, Public Law (Pub. L.) 113-46 (the Act);
- Code of Federal Regulations, Title 20, Part 609.3(d);
- UCFE Handbook No. 391 for State Agencies; and
- Unemployment Insurance Program Letter (UIPL) No. 31-13.

3. Background. During the recent shutdown of the Federal Government from October 1, 2013 through October 16, 2013, hundreds of thousands of Federal workers were placed on “furlough” status for some or all of that period. On October 11, 2013, the Department issued UIPL No. 31-13. This UIPL advised state workforce agencies that Federal workers who were placed on “furlough” status during the shutdown, during which time they were not allowed to perform their Federal services, were considered to be unemployed and may have been eligible for UCFE. Many furloughed Federal workers filed for UCFE. For example, Initial UCFE claims (unadjusted) totaled 70,068 in the week ending October 5, an increase of 68,677 from the week ending before the shutdown.

Effective October 17, 2013, the Continuing Appropriations Act ended the lapse in appropriations and allowed furloughed Federal workers to return to work. Section 115(a) of the Act requires that Federal employees be compensated “at their standard rate of compensation, for the period of such lapse in appropriations, as soon as practicable after such lapse in appropriations ends.” On October 17, 2013, the United States Office of Personnel Management (OPM) issued a Memorandum for Chief Human Capital Officers (Memorandum) “to assist agencies in administering pay and benefits” pursuant to section 115(a). The Memorandum states that “[a]n employee furloughed during the lapse in

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appropriations that began on October 1, 2013, must now be considered to have been in a pay status from October 1, 2013, until the end of the lapse in appropriations.” Accordingly, in order to compensate furloughed employees for what they would have received absent the lapse in appropriations, the Memorandum directs the payment of full compensation including, for example, regularly scheduled overtime “as if the employee actually continued to work” and allowances, differentials, and certain other payments “as if the work had been performed.” The Memorandum provides that the hours for which furloughed federal workers are to be compensated are “considered 'hours of work' for pay administration purposes under the Fair Labor Standards Act.” Therefore, all Federal employees will be reimbursed their full pay for the period during the government shutdown for which they would have received compensation but for the lapse in appropriations.

As described above, the Federal government is now treating furloughed Federal employees as having been in pay status during the lapse in appropriations. It is the Department’s position that this treatment of furloughed Federal employees renders them ineligible for UCFE under 20 CFR 609.3(d), because they are not considered to have been totally, part-totally, or partially unemployed for that period. States must take appropriate action, based on the pay status of furloughed Federal employees during the lapse in appropriations, and consistent with state law, to address the recoupment of UCFE payments to Federal employees. States must ensure that, in accordance with 20 CFR 609.9, UCFE will be paid by the state in the same amount, on the same terms, and subject to the same conditions as the payment of state unemployment compensation is provided to individuals covered under the applicable State law.

4. **Action Required.** State Administrators must:
 - a. Provide the contents of this directive to all appropriate staff;
 - b. Review UCFE payment records to determine if payments were made to furloughed Federal employees for weeks during which the shutdown was in effect;
 - c. Initiate all overpayment recovery actions permitted under the UCFE program for furloughed Federal workers covering the period for which those workers received retroactive pay; and
 - d. Fully cooperate with the Federal agencies in any UCFE overpayment determination and recovery activities.

5. **Inquiries.** Questions should be directed to the appropriate Regional Office.