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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 13-20

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH /s/
Assistant Secretary

SUBJECT: Families First Coronavirus Response Act, Division D Emergency
Unemployment Insurance Stabilization and Access Act of 2020

1. **Purpose.** To provide states with instructions for implementing the Families First Coronavirus Response Act, Public Law (Pub. L.) 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA).
2. **Action Requested.** The Department of Labor's Employment and Training Administration (Department) requests State Workforce Administrators to provide information contained in this Unemployment Insurance Program Letter (UIPL) to appropriate program and other staff in the state's workforce system.
3. **Summary and Background.**
 - a. Summary – On March 18, 2020, the President signed the Families First Coronavirus Response Act (Pub. L. 116-127). This legislation makes emergency supplemental appropriations in response to the spread of Coronavirus Disease 2019 (COVID-19) and includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) set out at Division D.
 - b. Background – The EUISAA sets out requirements for emergency administrative grants to states, and authorizes emergency flexibility allowing states to temporarily modify certain aspects of their unemployment compensation (UC) laws, a short-term waiver of interest on state trust fund advances, and full federal funding during extended benefit periods through December 31, 2020.

This UIPL provides instructions to states for implementing provisions of the new legislation. These provisions do not need to be implemented sequentially.

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Section 4 of this UIPL: Emergency Administrative Grants.

Section 4102 of EUISAA provides for emergency administrative grants to states of \$1,000,000,000 in the aggregate for administration of the Unemployment Insurance (UI) program, adding a new subsection (h) to Section 903 of the Social Security Act (SSA) (42 U.S.C. §1103).

These grants are allocated to states in the ratio prescribed at 42 U.S.C. §1103(a)(2)(B), in two separate allotments. There are distinct requirements that states must follow to receive each allotment.

Section 5 of this UIPL: Emergency Flexibility.

Section 4102(b) of EUISAA allows states to modify their UC laws and policies on an emergency temporary basis in response to the spread of COVID-19.

Section 6 of this UIPL: Full Federal Funding for Extended Benefits (EB).

Section 4105 of EUISAA provides that, for states receiving both allotments of the emergency administrative grants and also meeting the thresholds to trigger “ON” to EB, the Federal Government will, in most cases, pay 100 percent of the benefit costs of EB until December 31, 2020. Additionally, any state without a waiting week provision under state UC law or that elects to temporarily suspend the waiting week requirement will be temporarily provided with federal matching of the first week of EB through December 31, 2020, at either 50 percent or 100 percent based on whether the state meets the qualifications for emergency administrative grants Allotments I and II.

Temporary Assistance with State Trust Fund Advances.

Section 4103 of EUISAA deems any interest due on advances from the Federal Unemployment Account (FUA) in the Unemployment Trust Fund between March 18, 2020 and December 31, 2020 to be paid. Additionally, no interest shall accrue on any advances made to states from March 18, 2020 through December 31, 2020.

Technical Assistance for Short-Time Compensation (STC).

The legislation calls for the Department to provide technical assistance and guidance to states in establishing, implementing, and improving employer awareness of the STC program. Additional detail around this provision will be provided separately.

The guidance provided in this UIPL is intended to be used in addition to, and, where the flexibilities allowed by EUISAA are broader, in place of, the guidance recently provided in UIPL No. 10-20, *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)* (issued March 12, 2020). We encourage states to contact the Department for technical assistance.

We note that should there be additional legislation enacted in response to the COVID-19 that changes any of the provisions in Pub. L. 116-127 and this guidance, we will advise states immediately and provide additional guidance.

- 4. Emergency Administrative Grants.** Section 4102(a) of EUISAA added a new subsection (h) to Section 903, SSA authorizing a total of \$1,000,000,000 in emergency grants to states for administration of each state’s unemployment compensation law.

Funds provided through these emergency administrative grants may only be used for administration of the UC Program and are not available to be used for the payment of UC itself. As provided under Section 903(h)(4), SSA:

“Any amount transferred to the account of a State under this subsection may be used by such State only for the administration of its unemployment compensation law, including by taking such steps as may be necessary to ensure adequate resources in periods of high demand.”

Each state’s share is calculated as provided under Section 903(h)(1)(B), SSA:

“[To] be equal to the amount obtained by multiplying \$1,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State’s share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2019, under the provisions of subsection (a).”

This means each state's share is based on its proportionate share of calendar year 2018 Federal Unemployment Tax Act (FUTA) taxable wages multiplied by \$1,000,000,000. States are eligible for two equal, separate, and distinct allotments, each with specific application criteria. Allotment I is prescribed at 42 U.S.C. §1103(h)(1)(C)(i) and Allotment II is prescribed at 42 U.S.C. §1103(h)(1)(C)(ii). Each allotment is equal to 50 percent of the state’s calculated apportionment. **Attachment 1** contains a table of each state’s potential share of the emergency administrative transfer.

Federal law does not require an appropriation of these funds from the state legislature. We acknowledge that under some state laws a separate appropriation by their state legislatures will be required to use these funds.

- A. Allotment I of Emergency Administrative Grants.** According to 42 U.S.C. §1103(h)(1)(C)(i), 50 percent of the state’s available emergency administrative grant funds will be transferred to the state not later than 60 days after the date of enactment, provided the state meets each of the following three conditions:

- i. The state requires employers to provide notification of the availability of UC to employees at the time of separation from employment. States may base the notification on **Attachment 3**, which contains model language.

In situations where a state does not already have this requirement in place, states may have to amend statutes or regulations to meet this requirement. We recommend that the state consider issuing emergency regulations as the vehicle in order to meet the EUISAA’s 60-day requirement.

States have significant flexibility in the method of communicating this requirement to employers, as well as the form in which employers are to provide the notice to employees (such as letters, emails, text messages, or flyers given or sent to the individual providing the information).

- ii. The state ensures that applications for benefits and assistance with the application process are accessible in at least two of the following mediums: in-person, phone, or online.

Two recent UIPLs, discussed below, have addressed the requirement to ensure that applications for benefits and assistance with the application process are accessible to all individuals. For purposes of the application for benefits, Section 5(B) of UIPL No. 02-16, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits* (issued October 1, 2015), advises: “For persons unable to access or use a web-based system, the state must offer an alternative option for accessing information and benefits, such as by telephone and/or in person, in a manner that ensures equal access. Further, states must broadly and conspicuously disseminate information about alternative access options in ways that ensure that individuals who may need to use such options are aware of the options.”

For purposes of assistance with the application process, Section 4(A) of UIPL No. 14-18, *Unemployment Insurance and the Workforce Innovation and Opportunity Act* (issued August 20, 2018), advises that states should ensure that individuals have access to “staff that have been properly trained to provide . . . assistance and service to assist in claims taking by facilitating routine acceptance of information.” It also states: “Providing meaningful information or services can be carried out using technology to make a direct linkage to an appropriate program staff member . . . A direct linkage can take many forms. As described in 20 C.F.R. §678.305(d)(3)(i), a “direct linkage” means providing a direct connection at the American Job Center within a reasonable time, by phone or through a real-time web-based communication, to a program staff member who can provide program information or services to the customer.”

States that are in compliance with both UIPLs are presumed to have met the requirements of this provision for purposes of receiving Allotment I.

- iii. The state notifies applicants when an application is received and is being processed and, if states cannot process an application, the state provides information to the applicant on why and what steps the applicant can take to ensure the successful processing of the application.

Generally, the *Notice of Monetary Determination* will suffice if it includes notice to the claimant that an application is received and that it is being

processed or cannot be processed. The adjudicatory fact-finding processes serve to inform applicants of what they must do to ensure successful processing of the application.

States that do not immediately process an application, which is often due to an identity verification process, must notify the applicant that the application for benefits has been received, identify the reason why the claim was not processed, and provide information about what steps the applicant can take to ensure the successful processing of the application.

EUISAA requires that states receiving Allotment I of the emergency administrative grants must prepare a report to Congress and the Department due one year after the date of enactment. Additional instruction regarding the requirements of such reporting will be provided in separate guidance.

B. Allotment II of Emergency Administrative Grants. According to 42 U.S.C. §1103(h)(1)(C)(ii), the other 50 percent of the state’s available emergency administrative grant funds will be available if the state’s initial claims for unemployment have increased by 10 percent over the same rolling quarter in the previous calendar year and the state meets both of the following two conditions:

- i. The state expresses its commitment to maintain and strengthen access to the unemployment compensation system, including through initial and continued claims.
- ii. The state demonstrates steps it has taken or will take to ease eligibility requirements and access to UC, including modifying or suspending work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

Refer to Section 5, “Emergency Flexibility,” for additional details on how states can temporarily ease eligibility requirements and access to UC in response to the impacts of COVID-19.

We note that the non-charging allowance is limited to those employers directly impacted by COVID-19, due to an illness in the workplace or direction from a public health official to isolate or quarantine workers. The additional temporary emergency flexibilities may be applied to all individuals collecting UC during this temporary emergency.

For purposes of determining if and when a state’s initial claims for unemployment have increased by 10 percent over the same quarter in the previous calendar year, the Department will aggregate initial claims reported on the ETA 5159 report for State UI, Unemployment Compensation for ex-Federal Employees, and Unemployment Compensation for ex-service members for the most recent three-month period in the

previous year. This information will be posted on the Department’s website (<https://oui.doleta.gov/unemploy/>) under “General information related to Unemployment Insurance.”

- C. **Application Submission Requirements.** States have the option of applying for each of the two allotments separately, which may be particularly beneficial in the event that the state has not met the 10 percent increase in initial claims activity (compared to the same quarter in the previous calendar year) to meet the requirement of the second allotment or where the state is only able to commit to meeting requirements for Allotment I but not Allotment II. States that meet the requirements for both allotments may submit a single application requesting both allotments.

To receive these funds, states must submit the *Application for Federal Assistance* (SF-424, OMB Control No. 4040-0004, expiration date December 31, 2022). In addition to other information requested on the SF-424, each state must reference this UIPL in the opportunity number field of the application and enter the applicable amount set out for the state in **Attachment 1** of this UIPL. Instructions for completing the SF-424 are provided in **Attachment 2**.

In order to attest compliance with the requirements identified in this UIPL for receiving this funding, states should check the “I AGREE” box under Item 21 and include the appropriate language in Item 15 as indicated in the instructions for completing the SF-424. Additionally, please note that states should maintain any supporting documentation that serves as evidence for meeting the requirements in this UIPL, and based on which the funding is provided.

States are requested to submit a completed SF-424 to covid-19@dol.gov with a copy to the appropriate Regional Office.

- D. **Important Deadlines for Submission.** EUISAA requires the Department to transfer the grant funds to states meeting the Allotment I requirements no later than 60 days after enactment. The Department has determined this deadline to be May 15, 2020. To meet this requirement, states must submit a completed SF-424 requesting the first allotment by May 8, 2020.

The SF-424 for Allotment II funds must be made by the end of FY 2020. States must submit the SF-424 requesting the second allotment by September 15, 2020.

5. **Emergency Flexibility.** EUISAA builds on the flexibilities described in UIPL No. 10-20 by allowing for an emergency temporary modification of certain provisions under Section 303, SSA, and Section 3304, FUTA. States have significant authority in applying these flexibilities. Section 4102(b) of EUISAA states:

“Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an **emergency temporary basis**

as needed to respond to the spread of COVID-19, such modifications shall be disregarded for the purposes of applying section 303 of the [SSA] and section 3304 of [FUTA] to such State law (emphasis added).”

We encourage states to adopt these additional permissible flexibilities, which are discussed in further detail below. Any changes to state laws and policies to implement these flexibilities must be limited to the timeframe in which the COVID-19 pandemic is being addressed.

States may want to consider tracking claims activity related to COVID-19 separately from regular UI program administration for research and informational purposes.

- A. **Work Search.** Existing federal UC law requires that claimants be able to work, available for work, and actively seeking work. (42 U.S.C. §503(a)(12)). Building on the flexibility described in UIPL No. 10-20, the passage of EUISAA allows for states to provide for an emergency temporary modification or suspension of the “actively seeking work” requirement as needed to respond to the spread of COVID-19.

States may consider applying this emergency temporary flexibility to all individuals collecting UC and not just those recently separated. This allows individuals to more effectively comply with the social distancing recommendations of federal, state, and local government officials to mitigate the spread of COVID-19. States can also continue using the flexibilities for able-and-available requirements set out in UIPL No. 10-20.

- B. **Waiting Week.** Existing federal EB law requires states to have a non-compensable waiting week in order for the state to receive federal sharing of the first week of EB. Most states UC laws include a requirement to serve a non-compensable waiting week.

This existing law is temporarily superseded with the passage of EUISAA. States with no waiting week and states that temporarily suspend waiting week requirements are eligible to receive federal matching for the first week of EB, as discussed further in Section 6.

In light of the emergent need to cover individuals impacted by COVID-19 and to allow the UI program to act as an economic stimulus, states should consider temporarily suspending requirements to serve a non-compensable waiting week.

- C. **Good Cause.** State laws provide for instances where “good cause” is considered in making a determination of eligibility. This often applies in job separations where the individual voluntarily quits, as well as issues of suitable work, able-and-available requirements, and reporting requirements. This may also apply to allowable reasons for extending deadlines or suspending in-person reporting requirements. The passage of EUISAA provides broad flexibility for states to temporarily amend their “good cause” provisions in response to the spread of COVID-19.

We encourage states to consider temporarily modifying their good cause provisions in such a way as to comply with the social distancing recommendations of federal, state, and local government officials to mitigate the spread of COVID-19. Examples that states

may consider in allowing good cause include leaving work due to a reasonable risk of exposure or infection (i.e., self-quarantine) or to care for a family member affected by the virus. Where available, we also encourage states to seek alternative methods of participation by conducting appointments using virtual technology or by telephone.

D. Employer Experience Rating. As described in UIPL No. 10-20, many states do not charge individual employers for benefit costs under certain limited circumstances. These “noncharging” provisions are found in practically all state UC laws. When determining, in the context of COVID-19, whether certain unemployment benefits should be charged to employers, states should consider how to fairly distribute the costs to employers.

Additionally, states are reminded that if they opt to provide noncharging relief to reimbursable employers, then the same noncharging relief must also be provided to contributory employers.

Importantly, states must still apply the provisions under Section 3303(f), FUTA, which prohibit noncharging due to employer fault. This is discussed further in UIPL No. 02-12, *Unemployment Compensation (UC) Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)* (issued December 20, 2011), which advises that states must not relieve an employer of charges (noncharging) when the employer, or agent of the employer, is both “at fault for failing to respond timely or adequately to the request of the [state] agency for information relating to a claim for UC benefits that was subsequently overpaid and has established a pattern of failing to respond timely or adequately.”

6. Full Federal Funding for Extended Benefits (EB). Section 4105 of EUISAA made temporary changes to the Federal-State Extended Unemployment Compensation Act of 1970. For states receiving emergency administrative grants under clauses (i) and (ii) of Section 903(h)(1)(C), SSA (as described under Section 4 of this UIPL), in most cases, the Federal Government will pay 100 percent of any extended benefits, beginning on March 18, 2020 until December 31, 2020.

Additionally, states with no waiting week and states that temporarily suspend waiting week requirements are eligible, should their unemployment rate cause them to trigger “ON” the EB program, to receive federal matching of the first week of EB through December 31, 2020, at either 50 percent or 100 percent based on whether the state meets the qualifications for emergency administrative grants Allotments I and II. This provision applies to weeks of unemployment beginning after March 18, 2020 and ending on or before December 31, 2020.

As of March 18, 2020, there are currently no states that have triggered “ON” an EB period.

7. Inquiries. We encourage states to contact the Department for technical assistance. Please direct inquiries to covid-19@dol.gov, with a copy to the appropriate Regional Office.

8. References.

- Families First Coronavirus Response Act (Pub. L. 116-127), including Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020;
- Section 303, Social Security Act (SSA), 42 U.S.C. §503;
- Section 903, Social Security Act (SSA), 42 U.S.C. §1103;
- Section 3304, Federal Unemployment Tax Act (FUTA), 26 U.S.C. §3304;
- UIPL No. 02-12 (issued December 20, 2011), *Unemployment Compensation (UC) Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)* https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6707;
- UIPL No. 02-16 (issued October 1, 2015), *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits* https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4233;
- UIPL No. 14-18 (issued August 20, 2018), *Unemployment Insurance and the Workforce Innovation and Opportunity Act* https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4089;
- UIPL No. 10-20 (issued March 12, 2020), *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)* https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8893; and
- For purposes of determining if and when a state’s initial claims for unemployment have increased by 10 percent over the same quarter in the previous calendar year: “General information related to Unemployment Insurance” <https://oui.doleta.gov/unemploy/> .

9. Attachment(s).

- **Attachment I:** State Share of FY 2020 Emergency Administrative Grants
- **Attachment II:** Additional Guidance for States in Completing the Application for Federal Assistance (SF-424)
- **Attachment III:** Model Language for Employer Notification to Employees of the Availability of Unemployment Compensation