Questions and Answers

Emergency Administrative Grants

Allotment I: Employer Notifications. One of the requirements to receive Allotment I of the emergency administrative grants under Section 903(h)(2)(A) of the Social Security Act (SSA) (42 U.S.C. §1103(h)(2)(A)) is that:

> "The State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor."

1. Question: My state law already includes a requirement that employers post a notice at their worksite that informs workers of the availability of UC. Is this sufficient?

   Answer: No. Under Section 903(h)(2)(A), notice to workers must be provided individually and at the time of separation. As discussed in UIPL No. 13-20, the state does have significant flexibility in the method of communicating this requirement to employers, as well as the form in which employers provide the notice to employees (such as letters, emails, text messages, or flyers given or sent to the individual receiving the information).

   In situations where the existing state law does not already satisfy this requirement, the state may have to amend its statute or issue regulations. The Department recommends that the state consider issuing emergency regulations to satisfy this requirement for Allotment I funds in light of the statutory requirement that these grant payments be made within 60 days of the enactment of EUISAA.

Allotment II: Emergency Flexibility. One of the requirements to receive Allotment II of the emergency administrative grants under Section 903(h)(3)(B), SSA, (42 U.S.C. §1103(h)(3)(B)) is that:

> "The State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving 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."

2. Question: Must a state implement all three elements (*i.e.*, (i) waiving work search requirements, (ii) waiving the waiting week, and (iii) non-charging employers that are directly impacted by COVID-19) in order to receive Allotment II?

   Answer: At a minimum, the state must demonstrate steps it has taken or will take to implement all three elements, including: (i) suspending the waiting week, (ii) modifying or suspending the work search requirements, and (iii) non-charging employers. For each of the three elements, the minimum requirement is to modify, suspend, or waive for individuals or 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 state may also choose to implement flexibilities in response to COVID-19 that are broader than the minimum steps required for purposes of receiving Allotment II, to the extent permissible under existing federal law or the flexibilities provided under EUISAA, as discussed in UIPL Nos. 10-20 and 13-20.

3. Question: The state faces technological constraints that prevent them from immediately waiving the waiting week. Does this mean that they cannot receive Allotment II?

   Answer: No. Provided that the state is able to demonstrate steps it has taken, or will take, towards satisfying this requirement and the other requirements under Section 903(h)(3), SSA, the state may still receive Allotment II.

4. Question: Must the waiver of the work search requirement and waiver of waiting week under Section 903(h)(3), SSA, be permanent to satisfy the requirements for receiving Allotment II?

   Answer: No. To satisfy the requirements for receiving Allotment II, the state must temporarily waive the work search requirement and temporarily waive the waiting week for those directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

   Beyond the context of Allotment II, as discussed in UIPL No. 10-20, it is permissible under federal UC law for states to permanently waive the waiting week; however, this ordinarily will result in the loss of the federal share of funding for the first week of Extended Benefits (EB).

   As discussed in UIPL No. 13-20, Congress put in place flexibilities for states to temporarily waive certain federal law requirements for certifications under section 303, SSA (42 U.S.C. §503) and section 3304 of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. §3304), including waiver of the work search requirement. However, the modification or suspension of the work search requirement is permissible under federal UC law only as needed to respond to the spread of COVID-19 and only on an **emergency temporary basis**.

5. Question: For a state that already waived waiting weeks for individuals impacted by COVID-19, would this state need to extend such waivers to all individuals in order to qualify for Allotment II?

   Answer: No. To be eligible for Allotment II, the state must have waived, or demonstrated steps it has taken or will take to waive the waiting week, only for individuals impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine. If the state meets this requirement, and satisfies the other requirements provided under Section 903(h)(3), SSA, they are eligible to receive Allotment II.

   The state may choose to modify or suspend the waiting week for a broader group of individuals to the extent permissible under existing federal law or the flexibilities provided under EUISAA, as discussed in UIPL Nos. 10-20 and 13-20.

6. Question: To satisfy one of the requirements for receiving Allotment II, must the state provide both relief of charges for contributory employers and relief of payments due in lieu of contributions for reimbursable employers who are directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers?

   Answer: The state need only provide relief of charges for contributory employers who are directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers to meet this provision for receiving Allotment II.

   Beyond the context of Allotment II, as discussed in UIPL Nos. 10-20 and 13-20, states may apply this emergency flexibility more broadly in response to the spread of COVID-19 and may also choose to provide relief from payments due in lieu of contributions. Reference UIPL No. 18-20 for additional information on Section 2103 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136), which addresses unemployment relief for governmental entities and non-profit organizations.

Temporary Emergency Flexibility.

EUISAA builds on the flexibilities described in UIPL No. 10-20 by allowing for emergency temporary modification of certain provisions. 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).

Waiting Week

7. Question: If the waiting week is waived, must it be waived for UCX (military) and UCFE (federal civilian) claims?

   Answer: Yes. If the state waives its mandatory waiting period, it must be waived for all individuals receiving UC payments, including those individuals who file under the UCX and UCFE programs. As stated in 5 U.S.C. §8502(b), compensation must be paid "in the same amount, on the same terms, and subject to the same conditions which would be payable"

Work Search

8. Question: My state governor issued an executive order that required the waiver of work search requirements for all individuals collecting UC effective March 1, 2020. Will this cause a problem since EUISAA was signed into law on March 18, 2020?

   Answer: No. Emergency flexibilities under Section 4102(b) of EUISAA extend to changes in law and policy made on an emergency temporary basis as needed to respond to the spread of COVID-19. When evaluating conformity with the allowable emergency flexibilities, we will consider the temporary nature of the waiver and how it fits into the state's response to the spread of COVID-19, *e.g.,* stay-at-home orders and other requirements that greatly limit the individual's ability to reasonably find work.

9. Question: The federal law governing EB requires an individual to engage in a systematic and sustained effort to find work and to provide tangible evidence of this engagement. Does the emergency flexibility permissible under EUISAA for work search activities apply to EB claims?

   Answer: Yes. As permissible under Section 4102(b) of EUISAA, in response to the spread of COVID-19 the state may modify or suspend the work search requirement on an emergency temporary basis for EB claims.

   The state's decision on whether to modify or suspend the EB work search requirement must relate solely to the state's response to the spread of COVID-19. As a reminder, the EUISAA explicitly provides that authority for any such modifications ends once the modification is no longer needed to respond to the spread of COVID-19.

Good Cause

10. Question: An individual's employer offers him or her the ability to telework with pay. However, because of domestic violence, sexual violence, or stalking, the individual is unable to telework. Would the individual be eligible for regular UC?

Answer: This depends on state law. Many state UC laws already include provisions to allow good cause for quitting or having refused an offer of work when an individual is experiencing domestic violence, sexual violence, or stalking. With section 4102(b) of EUISAA, it is permissible under federal UC law for states without such existing provisions for good cause to temporarily provide for good cause under these circumstances in response to the spread of COVID-19.

Employer Experience Rating (Non-Charging of Employers)

11. Question: The state has opted to non-charge all employers for benefits paid during this period, not just those with direct impacts from COVID-19. Is this permissible under EUISAA?

    Answer: States may choose to extend the applicability of their non-charging provision more broadly than to just those employers directly impacted by COVID-19 if the state determines that this is needed to respond to COVID-19. We note that this is consistent with guidance provided to states in both UIPL Nos. 10-20 and 13-20. 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 cost among employers.

    Also, as noted in UIPL No. 13-20, states are reminded that if they opt to provide relief from payments due in lieu of contributions to reimbursable employers, then comparable relief must also be provided to contributory employers. However, if states opt to provide charging relief to contributory employers, they are not obligated to extend comparable relief from payments due in lieu of contributions to reimbursable employers.

12. Question: My state has heard concerns from reimbursable employers that since they are not experience-rated employers (*i.e.*, contributory employers), they will not be eligible for relief from payments due in lieu of contributions when they have been directly impacted by COVID-19. Is this correct?

    Answer: A state is not prohibited from providing relief from payments in lieu of contributions for reimbursing employers (*i.e.*, state and local governmental entities, certain nonprofit organizations, and federally-recognized Indian tribes that have elected to make payments in lieu of contributions). However, if relief is provided to reimbursable employers, then comparable relief must also be provided to experience-rated employers /contributory employers.

    When considering if the state should provide relief of charging or payments due in lieu of contributions, the state should always be cognizant of the potential impact on trust fund solvency.

    Reference UIPL No. 18-20 for additional information on Section 2103 of the CARES Act, which addresses unemployment relief for governmental entities and non-profit organizations.

13. Question: Regarding the experience rating provisions in EUISAA, if the state decides to provide relief from payments in lieu of contributions for reimbursable employers (non-profits, for example), must the state also provide relief from payments due in lieu of contributions for federal employers?

    Answer: No. Opting to make payments in lieu of contributions under section 3309 of FUTA is limited to state and local governmental entities, certain nonprofit organizations, and federally-recognized Indian tribes. Benefits attributable to federal service must be billed to federal employers.

Additional Requests for Flexibility within Existing Federal Law.

Able and Available Requirement

14. Question: May the state waive the requirement that an individual be able to work and be available to work in response to the spread of COVID-19?

    Answer: No. As discussed in UIPL No. 10-20, the state may not waive this requirement. However, states have discretion to determine the standards for whether an individual meets the able to work and available for work requirement within the parameters of 20 C.F.R. Part 604. An individual who is on a temporary layoff may meet the able and available requirement if the individual shows that he or she is making reasonable efforts to stay in contact with his or her employer in case work becomes available. An individual who is not on a temporary layoff must meet the able and available requirements contained in 20 C.F.R. Part 604.5(a). The state has flexibility in implementing those requirements, as discussed in UIPL Nos. 10-20 and 13-20.

15. Question: If the state has initially determined that an individual affected by COVID-19 satisfies the revised emergency eligibility conditions to qualify for regular UC, must the state revisit the individual's continued eligibility during each week that is paid?

    Answer: The state should flag the claim if there is a change in the individual's circumstances (*e.g.,* the individual continues to file for benefits after a temporary layoff is ended). The state should also flag the claim for review if there is a definite date when the restriction is no longer present (*e.g.*, if the doctor's note indicated self-quarantine for 14 days, the individual would be required to meet the state's regular availability requirements after the 14th day).

    However, the state does not have to re-adjudicate this issue each week if there is no change in circumstances.

Collection Efforts

16. Question: May the state suspend benefit offsets during the pandemic period?

Answer: No. The state may not suspend benefit offsets required by federal law. The Middle Class Tax Relief and Job Creation Act of 2012 changed the benefit offset provision from "may" to "shall" under both Section 3304(a)(4)(D), FUTA, and Section 303(g)(1), SSA.

However, the state does have significant flexibility in the way it implements the benefit offset requirement, such as limiting the amount to be deducted from each payment. Reference UIPL No. 05-13, *Work Search and Overpayment Offset Provisions Added to Permanent Federal Unemployment Compensation Law by Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012*, issued on January 10, 2013, for additional information.

17. Question: May the state suspend recovery under the Treasury Offset Program (TOP) temporarily to enable reallocation of UI resources?

    Answer: No. As a condition of receiving federal funds under Title III, SSA, to administer the state's UI program, Section 303(m), SSA (42 U.S.C. §503(m)), the state must use TOP to recover certain covered unemployment compensation (UC) debts that remain uncollected as of the date that is one year after the debt was finally determined to be due.

    Although federal law does not specify a frequency of submission of covered UC debt to TOP, the state is expected to submit the required debts at some time during each calendar year.

    "Covered unemployment compensation debt," as defined under 26 U.S.C. §6402(f)(4) includes:

    A. a past-due debt for erroneous payment of unemployment compensation due to fraud or the person's failure to report earnings which has become final under the law of the state certified by the Secretary of Labor pursuant to section 3304 of FUTA and remains uncollected;
    B. contributions due to the unemployment fund of the state for which the state has determined the person to be liable and which remain uncollected; and
    C. any penalties and interest assessed on such debt.

18. Question: Does TOP apply to CARES Act programs?

    Answer: Yes. As discussed in UIPL Nos. 11-11, 12-14, and 02-19, the requirement to use TOP recovery applies to any overpayment that meets the requirements of a "covered" UC debt, regardless of the UC program under which the debt is owed. Thus, in addition to the state UC program overpayments (*e.g.*, regular UC or EB), TOP must be used for recovery of covered debts of federal UC, such as Pandemic Unemployment Assistance (PUA) under section 2102 of the CARES Act, Federal Pandemic Unemployment

Compensation (FPUC) under section 2104 of the CARES Act, and Pandemic Emergency Unemployment Compensation (PEUC) under section 2107 of the CARES Act.

19. Question: Is the state permitted to temporarily suspend its collection efforts related to prior overpayments?

    Answer: This depends on whether a temporary suspension of collection efforts is permissible under state UC law. However, the state must continue to process benefit offsets and TOP collections.

Employer Reporting

20. Question: May the state extend the due date for submitting quarterly employer contributions and wage reports?

    Answer: In general, the Department recommends, to the extent possible, that the state not extend employer deadlines for quarterly contributions and wage reports. These quarterly reports are necessary for states to collect the necessary information to make timely and accurate eligibility determinations for individuals, including the use of the most recent quarterly wage reports for determining eligibility using an alternative base period, where applicable. In the absence of quarterly wage reports, the state will have to use wages provided by the individual that may impose greater administrative burdens, including the need to divert staff to verify unreported wages and to address possible overpayments that come to light later when employers file their quarterly wage reports.

    The state should provide information on their website to inform employers about the need to file quarterly contributions and wage reports timely to ensure accurate and timely payment of claims filed as a result of the COVID-19 pandemic.

21. Question: May the state delay employer UC contributions by 60 or 90 days?

    Answer: Whether the state extends due dates for employers to pay state unemployment tax act (SUTA) taxes/contributions is a matter of state law.

    However, when considering whether to allow an extension of the SUTA tax deadline, the state should consider the interaction between the payment of SUTA taxes/contributions and the ability of employers to claim credits against the FUTA tax. Federal law (26 U.S.C. §3302(a)(3), FUTA) requires SUTA taxes/contribution to be paid by the deadline specified in section 6071 of the Internal Revenue Code (March 31st) in order for those SUTA taxes/contributions to be considered when calculating the credit against the FUTA tax available to employers.

    The state should also be aware of the requirement in federal law that it must have procedures in place to ensure full payment when due. Any extensions that would

jeopardize the state's ability to ensure full and timely payment of UC would raise a federal issue.

22. Question: May the state waive an employer's delinquent UI taxes, including both principal and interest?

    Answer: Whether the state waives an employer's principal, interest, and penalties is a matter of state law.