

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DFAS
	DATE December 20, 2021

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 5-22

TO: STATE WORKFORCE AGENCIES

FROM: ANGELA HANKS /s/
Acting Assistant Secretary

SUBJECT: Implementation of Sequestration under the Budget Control Act of 2011 (BCA) for Mandatory Unemployment Insurance Programs for Fiscal Year (FY) 2022

1. **Purpose.** To ensure State Workforce Agencies (SWAs) apply the sequestration rules for FY 2022 to mandatory Unemployment Insurance (UI) programs. These rules include the application of sequestration on delayed benefit payments for prior FYs and the resulting administrative costs.
2. **Action Requested.** The Employment and Training Administration (ETA) advises State Administrators to provide this guidance to appropriate staff.
3. **Summary and Background.**
 - a. Summary – As required by the sequestration order and set out in the May 28, 2021, Office of Management and Budget (OMB) Report to the Congress on the Balanced Budget and Emergency Deficit Control Act (BBEDCA) 251A Sequestration for FY 2022, a 5.7 percent reduction in non-exempt mandatory programs is effective as of October 1, 2021, for FY 2022. Benefits attributable to Coronavirus Aid, Relief, and Economic Security (CARES) programs remain exempted from sequestration; however, the Department of Labor (Department) must apply sequestration to the administrative costs associated with these programs.
 - b. Background – The BCA amended the BBEDCA of 1985 to require reductions in budgetary authority, known as sequestration, beginning on January 2, 2013, unless Congress passed, and the President signed, a bill that reduced the deficit by at least \$1.2 trillion over 10 years. Such action did not occur and sequestration rules have been in effect since FY 2013.
4. **Sequestration in FY 2022.**
 - a. **Impact on the Mandatory UI Programs.** Below is a list of programs, projects, and activities (PPAs) related to the mandatory UI programs and the applicability of sequestration to each PPA.

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The following PPAs are exempted from sequestration:

- 1) Unemployment compensation paid by a state from its account in the Unemployment Trust Fund;
- 2) Title XII, Social Security Act (SSA), advances to states;
- 3) Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX);
- 4) Benefit expenses attributable to PPAs enacted through Pub. L. 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. (see explanation in paragraph b. below)

Note: The Federal Emergency Management Agency advises that there is no impact on Disaster Unemployment Assistance (DUA) administrative funding or benefits.

Sequestration applies to the following PPAs:

- 1) The permanent Federal share of Extended Benefits (EB);
- 2) Trade Adjustment Assistance (TAA) funds appropriated under the Federal Unemployment Benefits and Allowances Account (FUBA);
- 3) Administrative expenses attributable to PPAs enacted through Pub. L. 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

b. Impact of Sequestration on Benefit Costs for CARES Act PPAs. As stated above, the sequestration order set out in OMB's Report to Congress requires a 5.7 percent reduction to budget authority approved for FY 2022. The PPAs established through enactment of the CARES Act, as amended, expired September 6, 2021. Although residual benefit payments will continue to be issued to claimants beyond the expiration of these programs, the Department, in consultation with OMB, has determined these residual benefit payments to be obligations incurred when the week of unemployment was experienced. Therefore, residual benefit payments will continue to be charged to the FY 2021 budget authority and will not be subject to the 5.7 percent sequestration reduction.

c. Impact of Sequestration on Administrative Costs for CARES Act PPAs. The administrative expenses to be paid in FY 2022 for CARES Act programs are treated differently than CARES Act benefit costs paid in FY 2022. Administrative costs for CARES Act programs will require new budget authority for FY 2022 and will be subject to a 5.7 percent reduction. The National Office will apply the sequestration reduction to amounts prior to issuing the administrative funding to state grants.

d. Impact of Sequestration on EB. The permanent 50 percent Federal share of EB benefits authorized in the Federal-State Extended Unemployment Compensation Act (EUCA) of 1970 remains subject to sequestration. The applicable percentage of sequestration reduction to the permanent 50 percent Federal share of EB costs for FY 2022 is 5.7 percent starting with weeks of unemployment ending on October 2, 2021, and concluding with weeks of unemployment ending on September 24, 2022. Unless a state

amends its law to reduce EB, as explained below, a reduction in the Federal share of EB due to sequestration means the state becomes responsible for paying the remaining EB share from its own funds, i.e., the amount represented by the 5.7 percent reduction to the 50 percent Federal share provided under EUCA. For any EB payments related to the permanent EB program as authorized by EUCA made in FY 2022, the FY 2022 sequestration reduction of 5.7 percent must be applied.

Authority for States to Reduce EB Weekly Benefit Amounts due to Sequestration

Under EUCA, the EB weekly benefit amount (WBA) is “the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for such week for total unemployment.” (Section 202(b)(2), EUCA.) However, section 256(h)(2) of BBEDCA (2 U.S.C. 906(i)(2)) permits states to reduce EB WBAs if the Federal share of EB costs is reduced under a sequestration order. That section provides:

(A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 904 of this title by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of Title 26.

As a condition of reducing EB WBAs, state law must authorize the reduction in EB WBAs as specified in the BBEDCA. Note that actual reductions in Federal spending could not be achieved if WBAs are reduced without also reducing individuals’ remaining entitlement or maximum benefit amount (MBA) for EB. For this reason, state law must also provide for reductions in EB remaining entitlement and MBA if it provides for reducing EB WBAs.

Any state amending its law to provide for EB reductions due to sequestration must provide notice to claimants and an opportunity to appeal the calculation of the amounts. The notice should also inform claimants that appeal of the sequestration reduction itself will not succeed as sequestration is mandated by Federal law.

Any state considering a change in state law to reduce the WBA is encouraged to work closely with ETA to ensure conformity with Federal UC law.

- e. **Impact of Sequestration on TAA.** The applicable percentage of reduction to TAA is 5.7 percent in FY 2022. As in previous fiscal years, using the flexibility under BBEDCA, the Department will apply the full TAA Program sequestration to the funding for Training and Other Activities, which are the funds available for training, employment and case

management services, out-of-area job search, relocation allowances, and related administrative expenses. The reductions will not be applied to Trade Readjustment Allowances (TRA), Reemployment Trade Adjustment Assistance (RTAA) benefits, or Alternative Trade Adjustment Assistance (ATAA) available under the TAA Program.

5. **Inquiries.** Please direct inquiries to the appropriate ETA Regional Office.

6. **References.**

- Federal-State Extended Unemployment Compensation Act of 1970 (Federal-State EUCA) (Pub. L. 91-373);
- Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) (Pub. L. 99-177), as amended by the Budget Control Act of 2011;
- Budget Control Act of 2011(BCA) (Pub. L. 112-25);
- Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96);
- American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112-240);
- Families First Coronavirus Response Act of 2020 (Pub. L. 116-127);
- Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (Pub. L. 116-136);
- Unemployment Insurance Program Letter (UIPL) No. 23-08, issued July 7, 2008, *Supplemental Appropriation Act, 2008, Title IV – Emergency Unemployment Compensation*, and its changes 1 through 6;
- UIPL No. 04-10, Change 3, *Emergency Unemployment Compensation Program Extension and Modification, Extended Benefits Temporary Provisions Extension, and Expiration of Federal Additional Compensation*, issued July 23, 2010;
- UIPL No. 04-10, Change 9, *Extension and Modification of Emergency Unemployment Compensation, 2008 (EUC08) and Extension of Temporary Extended Benefits (EB) Provisions*, issued March 5, 2012;
- UIPL No. 22-12, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*, issued June 18, 2012;
- UIPL 18-19, *Implementation of Sequestration under the Budget Control Act of 2011 (BCA) for Mandatory Unemployment Insurance Programs for Fiscal Year (FY) 2020*, issued September 16, 2019;
- UIPL 12-21, *Implementation of Sequestration under the Budget Control Act of 2011 (BCA) for Mandatory Unemployment Insurance Programs for Fiscal Year (FY) 2021*, issued January 19, 2021;
- Office of Management and Budget (OMB) Report to the Congress on the Joint Committee Reductions for Fiscal Year 2020, dated March 18, 2019;
- Office of Management and Budget (OMB) Report to the Congress on the Joint Committee Reductions for Fiscal Year 2021, dated February 10, 2020; and
- Office of Management and Budget (OMB) Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2022, dated May 28, 2021.

7. **Attachments.** Not applicable.