

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DL
	DATE June 3, 2021

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 13-20, Change 2

TO: STATE WORKFORCE AGENCIES

FROM: SUZAN G. LEVINE /s/
Principal Deputy Assistant Secretary

SUBJECT: Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) – Review of State Compliance for Receipt of Emergency Administrative Grants and Clarification on Benefit Offset Requirements

1. **Purpose.** To request that states provide the Department of Labor (Department), using Form MA 8-7, information pertaining to state compliance for receipt of emergency administrative grants. Additionally, this Unemployment Insurance Program Letter (UIPL) clarifies the benefit offset requirements for collection of overpayments.
2. **Action Requested.** The Department requests State Workforce Administrators provide information contained in this UIPL to appropriate program and other staff in the state’s workforce system.

States must use the Form MA 8-7 to submit the required information described in section 4 of this UIPL to the Department no later than 60 days after the issuance of this UIPL (August 2, 2021). States should e-mail submissions to covid-19@dol.gov.

3. Summary and Background.

- a. Summary – On March 18, 2020, the President signed the Families First Coronavirus Response Act (Public Law (Pub. L.) 116-127). This legislation makes emergency supplemental appropriations in response to the spread of Coronavirus Disease 2019 (COVID-19) and includes the EUISAA set out at Division D. EUISAA authorizes temporary emergency flexibilities allowing states to modify certain aspects of the state unemployment compensation (UC) laws and policies as needed to respond to the spread of COVID-19. The Department issued UIPL Nos. 13-20 and 13-20, Change 1, providing states with instructions for implementing the provisions set forth in EUISAA.

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This UIPL requires states to submit documentation, using the MA 8-7 process, demonstrating actions the state took in support of its attestation of compliance with the requirements to obtain Allotment I and Allotment II emergency administrative grants. This UIPL also provides a clarification on the requirement for benefit offsets in collecting overpayments.

b. Background –

Section 4102(a), EUISAA, provides for emergency administrative grants to states 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 were 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 had to follow to receive each allotment.

Section 4 of UIPL No. 13-20 describes the allocation formulas and application requirements for states to receive emergency administrative grants under Section 903(h), SSA. To receive the funds, states attested compliance with the requirements through the *Application for Federal Assistance* (SF-424). States were not required, at the time, to provide documentation in support of the certification.

Section 3603 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-131) amended one of the requirements for a state to receive Allotment I. This is discussed in more detail in Section 4.b.i. of UIPL No. 13-20, Change 1.

To obtain Allotment I, the state had to attest that it would meet each of the following conditions:

- i. Require employers to provide notification of the availability of UC to employees at the time of separation from employment;
- ii. Ensure that applications for UC and assistance with the application process are accessible, to the extent practicable, in at least two of the following mediums: in-person, by phone, or online; and
- iii. Notify applicants when an application is received and is being processed and, if states cannot process an application, provide information to the applicant on why and what steps the applicant can take to ensure the successful processing of the application.

States are reminded that, as a condition of receiving Allotment I, the state must prepare a report to Congress and the Department, which was due on March 18, 2021. Additional instruction regarding these requirements is provided in Training and Employment Notice No. 16-20.

To obtain Allotment II, initial claims for unemployment in the state must have increased by 10 percent over the same rolling quarter in the previous calendar year. As discussed in Section 4.B. of UIPL No. 13-20, ETA aggregated the initial claims

reported on the ETA 5159 report for State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX) to determine if and when a state's initial claims for unemployment increased by 10 percent over the same quarter in the previous calendar year.

Additionally, the state had to meet each of the following conditions:

- i. Express its commitment to maintain and strengthen access to the UC system, including through initial and continued claims; and
- ii. Demonstrate steps it has taken, or will take, to ease eligibility requirements and access to UC, including (i) suspending the waiting week, (ii) modifying or suspending work search requirements, and (iii) non-charging employers.

As described in Question 2 of Attachment I to UIPL No. 13-20, Change 1, for each of the three elements involved in easing eligibility requirements and access to UC, the minimum requirement to qualify for Allotment II is to demonstrate steps that the state has taken or will take to modify, suspend, or waive the waiting week or work search requirements for individuals 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.

Separate from the minimum requirements to obtain emergency administrative grants, the state is authorized to extend certain flexibilities to a broader group of individuals in response to the spread of COVID-19, as described in Section 5 of UIPL No. 13-20.

Additionally, the American Rescue Plan Act of 2021 (ARPA) (Pub. L. 117-2) was enacted on March 11, 2021, which includes a \$2,000,000,000 appropriation to the Secretary of Labor (Secretary) for fraud detection and prevention, and to promote equitable access and ensure timely payment of benefits to eligible workers. Such funds may be used for federal administrative costs; system-wide infrastructure investment and development; and to make grants to states or territories administering UC programs (including territories administering the Pandemic Unemployment Assistance (PUA) program) for such purposes. This includes the establishment of procedures or the building of infrastructure to verify or validate identity, implementing federal guidance regarding fraud detection and prevention, and accelerating claims processing or processing claims backlogs due to the pandemic. Guidance regarding this appropriation will be provided at a later time.

4. **Request for Documentation.** States must submit documentation to the Department, using form MA 8-7 (attached), no later than 60 days after the issuance of this UIPL (**August 2, 2021**) to demonstrate actions the state took in support of its attestation of compliance with the requirements to obtain Allotment I and Allotment II emergency administrative grants.

Section 303(a)(6), SSA, (42 U.S.C. 503(a)(6)) requires, as a condition of a state receiving UC administrative grants, that state law contain provisions for the "making of such reports, in

such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.”

Department regulations at 20 C.F.R. 601.3, in part, implement this requirement by requiring the submission of “all relevant state materials, such as statutes, executive and administrative orders, legal opinions, rules, regulations, interpretations, court opinions, etc.”

The Form MA 8-7 is the mechanism for implementing these submittal requirements, the purpose of which is to provide the Secretary of Labor with sufficient information to determine if: (a) state UC law conforms to the Federal Unemployment Tax Act (FUTA), so that employers in a state may qualify for tax credits; (b) state UC law conforms with Title III, SSA, for the state to obtain administrative grants; and (c) the state fulfills its obligations under federal UC programs.

Office of Management and Budget (OMB) Approval. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved the use of form MA 8-7 for data collection under control number 1205-0222.

We provide the following considerations as states prepare the requested documentation.

a. Requirements to obtain Allotment I.

- i. *Require employers to provide notification of the availability of UC to employees at the time of separation from employment.* The state must document the actions it took in support of its attestation of compliance with this requirement and, if the requirement was later eliminated, when it was eliminated and reasons for elimination. States are encouraged to continue this practice as an investment in strengthening access to the UI program.
- ii. *Ensure that applications for UC, and assistance with the application process are accessible, to the extent practicable, in at least two of the following mediums: in-person, by phone, or online.* The state must document the actions it took in support of its attestation of compliance with this requirement. This is an ongoing requirement for the state UI program. As set out in UIPL No. 02-16, Change 1, and UIPL No. 14-18, states must comply with their statutory and regulatory obligations to provide access to UI benefits, services, and information. States that are in compliance with both UIPL No. 02-16, Change 1, and UIPL No. 14-18 are presumed to have met this requirement for receiving Allotment I. These are permanent tenets of the UI program.
- iii. *Notify applicants when an application is received and is being processed and, if states cannot process an application, provide information to the applicant on why and what steps the applicant can take to ensure the successful processing of the application.* The state must document the actions it took in

support of its attestation of compliance with this requirement and, if the requirement was later eliminated, when it was eliminated and the reasons for elimination. States are encouraged to continue this practice as an investment in strengthening access to the UI program.

b. Requirements to obtain Allotment II.

- i. *Commitment to maintain and strengthen access to the UC System, including through initial and continued claims.* The state must document the actions it took in support of its attestation of compliance with this requirement. This is an ongoing requirement for the state UI program, as described in UIPL Nos. 02-16, Change 1, and 14-18.
- ii. *Demonstrate steps the state has taken, or will take, to ease eligibility requirements and access to UC, including (i) suspending the waiting week; (ii) modifying or suspending work search requirements, and (iii) non-charging employers.* The state must document the actions it has taken in support of its attestation of compliance with this requirement. This requirement applies to individuals and 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. If the requirement was later eliminated, the state must provide when it was eliminated.

5. Requirement to Collect Overpayments through Benefit Offsets. We provide clarification on Question 16 of Attachment I to UIPL No. 13-20, Change 1. Section 303(g)(1), SSA, provides that:

A State shall deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

This provision of federal UC law makes it a requirement for states to use regular UC to offset overpayments of federal UC programs or other states' regular UC programs. However, we have concluded that this provision does not require offset for a state's own regular UC. Therefore, the question of whether a state may suspend offsetting regular intrastate UC against regular intrastate UC overpayments is a matter of state law.

Although it is permissible for a state to temporarily suspend benefit offsets to recover intrastate UC overpayments, doing so limits the use of a controllable means to recoup its overpayments and impacts the overall amount of UC recoveries within the state. ETA

recommends that states who choose to temporarily suspend benefit offsets for intrastate UC overpayments reinstitute the use of benefit offsets as soon as feasibly possible.

6. **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.

7. **References.**

- American Rescue Plan Act of 2021 (ARPA), including Title IX, Subtitle A, Crisis Support for Unemployed Workers (Pub. L. 117-2);
- CARES Act (Pub. L. 116-136), Title II, Subtitle A, Unemployment Insurance Provisions, and Section 3603;
- 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, SSA, 42 U.S.C. §1103;
- Section 3304, Federal Unemployment Tax Act (FUTA), 26 U.S.C. §3304;
- 20 C.F.R. § 603.1;
- 20 C.F.R. § 609.1;
- UIPL No. 13-20, Change 1, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) – Reporting Instructions, Modification to Emergency Administrative Grants Application Requirement, and Questions and Answers*, issued May 4, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5374;
- UIPL No. 13-20, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020*, issued March 22, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634;
- UIPL No. 14-18, *Unemployment Insurance and the Workforce Innovation and Opportunity Act*, issued August 20, 2018, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4089;
- UIPL 02-16, Change 1, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits, Services, and Information*, issued May 11, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5491;
- UIPL No. 02-16, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits*, issued October 1, 2015, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4233; and
- Training and Employment Notice No. 16-20, *Submission of a Congressionally required report on the Unemployment Compensation (UC) Reciprocity Rate by states receiving Allotment I of the emergency administrative grants under Section 4102(a) of the Families First Coronavirus Response Act, Division D, Emergency Unemployment Insurance Stabilization Access Act of 2020 (EUISAA)*, issued on January 15, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4938.

8. **Attachment(s).**

Attachment I: Form MA 8-7