

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Retirement Pay
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**ADVISORY:** UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 10-09

**TO:** STATE WORKFORCE AGENCIES

**FROM:** BRENT R. ORRELL /s/  
Deputy Assistant Secretary

**SUBJECT:** Treatment of Pension Rollover Distributions

1. Purpose. To advise states of an amendment to Federal unemployment compensation (UC) law that prohibits the reduction of UC due to nontaxable pension rollover distributions.
2. References. Sections 3304(a)(15) of the Federal Unemployment Tax Act (FUTA); Public Law 109-280, the Pension Protection Act of 2006; Public Law 110-458, the Worker, Retiree, and Employer Recovery Act of 2008; Unemployment Insurance Program Letter (UIPL) 22-87 and Changes 1 (60 Fed. Reg. 55,604 (1995)) and 2 (68 Fed. Reg. 15,241 (2003)); Internal Revenue Service (IRS) Publications 575 and 590; and IRS Tax Topic 413 - Rollovers from Retirement Plans.
3. Background. As a result of an amendment made by the Worker, Retiree, and Employer Recovery Act of 2008, states are now prohibited from reducing UC due to nontaxable pension rollover distributions. Whether to reduce UC due to receipt of taxable distributions remains a matter for the state to determine. This UIPL is issued to explain the amendment and its effect.

Based on information available to the Department, only one state currently reduces UC due to any pension rollovers. However, all states should review their laws regarding treatment of rollovers to assure state law is consistent with the amendment.

4. Amendment to Federal Law. Section 3304(a)(15), FUTA, requires, as a condition of

<b>Rescissions:</b> UIPL 22-87, Change 2	<b>Expiration Date:</b> Continuing
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employers in a state receiving credit against the Federal unemployment tax, that the state law provide that the amount of UC payable to an individual be reduced for any week which begins in a period with respect to which the individual is “receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual . . . .” This section goes on to provide certain exceptions to this requirement that are not relevant here.

The Pension Protection Act of 2006 added new language to the end of Section 3304(a), FUTA, providing that UC “shall not be reduced under paragraph (15)” due to any retirement payment “not includible in gross income of the individual for the taxable year in which paid because it was part of a rollover distribution.” The Worker, Retiree, and Employer Recovery Act of 2008 deleted this language, redesignated existing provisions of Section 3304(a)(15), FUTA, and added the following new language:

(B) the amount of compensation shall not be reduced on account of any payments of governmental or other pensions, retirement or retired pay, annuity, or other similar payments which are not includible in the gross income of the individual for the taxable year in which it was paid because it was part of a rollover distribution . . . .

5. Effect of Amendment. Prior to the 2006 amendment, states were free to determine whether rollover distributions would cause a reduction in UC. (See UIPL 22-87, Change 2, which this UIPL rescinds.) The effect of the 2006 amendment was ambiguous as it was unclear whether it prohibited the reduction of UC due to rollover distributions or merely clarified that FUTA did not require this reduction. The 2008 amendment is clear that states may *not* reduce UC due to payments “which are not includible in the gross income of the individual for the taxable year in which it was paid because it was part of a rollover distribution . . . .” In summary, as a result of the 2008 amendment, states are prohibited from reducing UC due to these nontaxable distributions; whether to reduce taxable distributions remains a matter for the state to determine.

Whether a rollover distribution is “not includible in the gross income of the individual” for a taxable year is determined under IRS guidelines. In general, a distribution from an eligible retirement plan is not includible in gross income when the taxpayer “rolls over” the distribution to another eligible retirement plan within 60 days.

Rollovers may occur in two ways. If the distribution is rolled over directly from one eligible retirement plan to another, the amount will not be includible in gross income, and FUTA therefore prohibits reduction of UC due to this rollover. If the distribution is paid directly to the individual, any amount of the requested distribution the individual pays into a qualified retirement plan within 60 days is not includible in gross income, meaning that a state may not reduce UC by that amount. Conversely, any amount distributed to the individual that the individual does *not* timely pay into another eligible retirement plan is includible in gross

income; states may therefore elect to either reduce the individual's UC by that amount or not.

For further information on rollovers and their tax status, see IRS Tax Topic 413 - Rollovers from Retirement Plans and IRS Publications 575 and 590. These documents are available at [www.irs.gov](http://www.irs.gov).

As noted above, states remain free to determine whether to reduce UC due to a taxable distribution. If a state chooses to reduce UC due to taxable distributions, it must determine that a distribution is in fact taxable. Making this determination can be highly technical and time consuming, especially because the distribution's tax status is controlled by the 60-day timeframe, with the result that the tax status of the distribution may not be known until well after the initial payment of UC has been made.

6. Effective Date. According to Section 112 of the Worker, Retiree, and Employer Recovery Act of 2008, the amendment "shall take effect as if included in the provisions of" the Pension Protection Act of 2006 "to which the amendments relate." Because the Department recognizes that states that are not able to make the change through administrative interpretation may need time to introduce and enact conforming legislation to meet the requirements of P.L. 110-458, the Department will take no enforcement action prior to October 31, 2009.
7. Effect of Redesignation on Departmental Issuances. As noted above, the Worker, Retiree, and Employer Recovery Act of 2008 redesignated existing provisions of Section 3304(a)(15), FUTA. As a result, the Department's previous issuances on this section no longer necessarily cite the correct paragraphs, clauses, and subclauses. The redesignation of these provisions does not affect the Department's interpretation of the requirements of Federal law as contained in UIPL 22-87, its changes, or other departmental issuances, except that UIPL 22-87, Change 2, has been rescinded.
8. Action. State administrators should review existing state law provisions to assure consistency with Federal UC law requirements and take appropriate action to obtain any needed legislation.
9. Inquiries. Please direct any questions to your Regional Office.