EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI – STC
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ADVISORY: **UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 03-13**

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Financing of Temporary Federal Short-Time Compensation Programs under Section 2163 of the Middle Class Tax Relief and Job Creation Act of 2012

1. **Purpose.** To invite states to enter into an Agreement with the Secretary of Labor (Secretary) to administer a temporary Federal Short-Time Compensation (STC) program under the Middle Class Tax Relief and Job Creation Act of 2012 (Act) and provide states with instructions for implementing and operating the program, including fiscal and reporting instructions.

2. **References.**
   - Title II of the Middle Class Tax Relief and Job Creation Act of 2012 (Act), (Public Law (Pub. L.) 112-96), the Layoff Prevention Act of 2012 (Subtitle D of title II of the Act, sections 2160 – 2166);
   - Section 401 of the Unemployment Compensation Amendments of 1992, (Pub. L.102-318);
   - Section 194 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Pub. L. 97-248);
   - Section 3303(a)(1) of the Federal Unemployment Tax Act (FUTA);
   - Sections 3304(a)(4)(E) and (6)(B) of FUTA;
   - Section 3306(f)(5) of FUTA;
   - Section 3309(a)(2) of FUTA;
   - Section 303(a)(5) of the Social Security Act (SSA);
   - Sections 414(i) and (j) of the Internal Revenue Code (IRC);
   - Workforce Investment Act (WIA) Final Rule;
   - 20 Code of Federal Regulations (CFR) parts 665.300(a)-665.330, *Subpart C—Rapid Response Activities;*
   - 29 CFR part 97.42, *Retention and access requirements for records*;
   - Unemployment Insurance Program Letter (UIPL) No. 22-12, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*;
   - UIPL No. 12-01, *Outsourcing of Unemployment Compensation Administrative Functions*, and UIPL No. 12-01, Change 1;

RESCISSIONS None	EXPIRATION DATE Continuing

- UIPL No. 45-92, *Unemployment Compensation Amendments of 1992 (Pub. L. 102-318) – Provisions Affecting the Federal-State Unemployment Compensation (UC) Program*; and
- Training and Employment Guidance Letter (TEGL) No. 30-09, *Layoff Aversion Definition and the Appropriate Use of Workforce Investment Act Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver*.

3. **Background.** STC programs, also known as work-sharing or shared work programs, are designed to preserve employees' jobs and help employers retain their skilled workforce during times of lowered economic activity in the business cycle of an employer. STC programs help employers avert temporary or permanent layoffs through the reduction of work hours for a whole group of employees rather than lay off some while others continue working full time.

   Section 194 of TEFRA authorized states to implement temporary STC programs using funds from their accounts in the Unemployment Trust Fund (UTF). Section 401 of Pub. L. 102-318 added permanent statutory authority for states to fund STC programs from their UTF accounts and established certain requirements in defining STC. Under the Act, the definition of STC is modified from that in Pub. L. 102-318. The term "short-time compensation" is defined in new subsection (v) of Section 3306, FUTA. See UIPL No. 22-12, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012* for the full STC definition. States are not required to enact an STC program into law; however, states may not operate an STC program that does not conform to the STC definition in Section 3306(v) of FUTA, except temporarily, as provided under Section 2160(a)(3) of the Act.

   Employer participation in an STC program is voluntary. An employer must submit a written plan to the state UC agency, which is subject to the state's approval. The employer's plan must be consistent with employer obligations under applicable Federal and state laws. Further, the affected employees' (also known as "affected unit") workweeks must have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the state, but in no case more than 60 percent. STC employees are considered to be job attached and will meet the UC availability for work and work search test requirements (while collecting STC) by being available for the workweek as required by the state agency. Further, the STC plan must provide that employers will maintain (to the same extent as other employees not participating in the STC program) health benefits and retirement benefits under Sections 414 (i) and (j) of the IRC for employees in the affected unit, despite the reduced hours; and the plan may provide that workers in the affected unit may participate in employer sponsored or WIA-funded training if approved by the UC agency.

   Section 2162 of the Act provides for Federal reimbursement of state STC benefit costs. Reimbursement is available for up to 156 weeks to states whose STC laws conform to the definition in Section 3306(v), FUTA. Such states would, generally, not participate in the temporary Federal STC program described in section 4 below.

4. **Temporary Federal STC.** If a state law does not presently provide for the payment of STC, Section 2163 of the Act permits states to enter into an agreement with the Secretary to implement a temporary Federal STC program. Federal STC is an opportunity for states to operate an STC program temporarily and determine the feasibility of full-scale

implementation. States may administer the temporary Federal STC program starting from the date the agreement is executed through May 24, 2014. Federal STC programs are administered by the states acting as agents of the Secretary. Payments of the temporary Federal STC must be paid in accordance with Section 3306(v), FUTA. Further, states that choose to operate a Federal STC program must do so in accordance with the U.S. Department of Labor's (Department) guidance and abide by the required agreements (see Attachments III and IV).

Under the Federal STC agreement, the state will receive Federal financing of one-half (50 percent) of the benefit costs of STC and the STC employer must pay one-half of the benefit costs. Amounts collected from employers under this provision must be deposited into the state's unemployment fund and may <u>not</u> be used for calculating the employer's contribution rate. Section 2163(b)(3) of the Act requires employers to reimburse the state for one-half of the Federal STC costs, and provides that these reimbursements will be deposited in the state's unemployment trust fund. (Under the "immediate deposit" standard of section 3304(a)(3), FUTA, and section 303(a)(4), SSA, the state must immediately transfer these reimbursements in its unemployment fund to its account in the Federal UTF). The section further provides that the reimbursements must not be used for purposes of calculating an employer's contribution rate under section 3303(a)(1), FUTA. This means that the reimbursements may not be credited to the employers' reserve or applied as a voluntary contribution.

In addition to reimbursing the state for one-half of the benefit costs of Federal STC, the Federal government will provide funds for administrative expenses associated with operating a Federal STC program. Administrative funds will be provided under an Addendum to the Unemployment Insurance (UI) Program Annual Funding Agreement. The state must submit a request/proposal through the Supplemental Budget Request (SBR) grant process to receive administrative funds for the costs associated with a Federal STC program, including implementation and outreach activities. The SBR grant process for this administrative funding is further explained below.

<u>Payments to States: 50 Percent Federal Funding for Federal STC payments</u>

As noted above, the Federal government will reimburse states for 50 percent of the benefit costs of a Federal STC program. Reimbursement of STC benefit costs may not exceed 104 weeks or extend past May 24, 2014. No reimbursement will be made to states for Federal STC paid to any individual in excess of 26 times the amount of regular UC (including dependents' allowances) as well as Federal STC paid to any individual(s) employed by an STC employer on a seasonal, temporary, or intermittent basis. The 50 percent reimbursement payment process works as follows:

- Payments made to a state will be payable by way of reimbursement in the amounts the Secretary estimates the state will be entitled to receive for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the estimates for any prior calendar month were greater or less than the amounts which should have been paid to the state.

- Reimbursement for benefits will be provided to each eligible state through the UI Program Annual Funding Agreement, after the state executes an Addendum to the Agreement to allow for the funding (see Attachment IV). The Grant Officer will assign a separate line on the UI program notices allowing for an issuance of obligational authority for STC benefit funds, and a separate sub-account for STC benefits will be set up in the Payment Management System (PMS) for states to draw down STC benefit funds. This will function identically to the benefit funding for Trade Readjustment Allowances and wage insurance benefits that are also covered by the UI Program Annual Funding Agreement.

States that enact legislation that conforms to Section 3306(v), FUTA, will receive an extra 52 weeks of 100 percent Federal reimbursement of STC benefit costs and they may also apply for an STC grant to implement/improve administration of the STC program and for STC promotion and enrollment. States that have laws that conform to the new requirements are eligible for 100 percent reimbursement of benefit costs until August 22, 2015; however, they must apply for the STC grant(s) on or before December 31, 2014.

If a state operates a Federal STC program and later enacts a law providing for the payment of STC under a state STC program that meets the definition of Section 3306(v), FUTA, the state:

- Will be eligible to receive reimbursement for STC costs after the effective date of its new STC law as provided in Section 2162 of the Act; and,
- Must sign an agreement so the state can receive the maximum combined reimbursement not to exceed a total of 156 weeks.

Federal STC Administrative Expenses

As stated above, reimbursement of Federal STC program administrative costs will be provided to each eligible state under the UI Program Annual Funding Agreement. Like the process for reimbursement of Federal STC benefits, the Grant Officer will assign a separate line on the UI program notices allowing for issuance of obligational authority for STC administrative funds, and a separate sub-account for STC administration will be set up in the PMS for states to draw down funds to pay administrative costs. Reimbursement will be provided for both implementation costs as well as ongoing administrative costs.

- The reimbursement for implementation costs of Federal STC will be made available through the SBR grant process. To receive SBR funding, states will need to submit an SBR detailing one-time costs attributable to the implementation of Federal STC.
- Ongoing STC administrative costs will be paid for through the ETA UI-3 Quarterly Financial Report (Office of Management and Budget (OMB) No. 1205-0132), also referred to as the “above-base” funding process, based on the workload levels reported on the STC-related report (the ETA 5159, *Claims and Payment Activities (Workshare)* report (OMB No. 1205-0010)). These workloads will be funded at the same rates that apply to regular UI above-base workloads.

In submitting SBRs, the Department recommends that states consider how a Federal STC program can be used as a tool for outreach activities as part of the state plan to avert layoffs. See TEGL No. 30-09 for guidance on layoff aversion strategies and a definition of layoff aversion. As noted in that TEGL, "ETA considers a layoff averted when: 1) a worker's job is saved with an existing employer that is at risk of downsizing or closing; or 2) a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no or a minimal spell of unemployment." States should develop a coordinated strategy to avert layoffs using STC as a layoff aversion tool and consult with the appropriate partners before implementing a Federal STC program. In addition to the UI program, partners may include, but are not limited to:

- Workforce system partners: Rapid Response teams, American Job Centers (also known as One-Stop Career Centers), and Business Service representatives;
- The employer/business community including, but not limited to, chambers of commerce, small business organizations, manufacturers associations, human resource organizations, and employer third-party administrators;
- Labor organizations; and
- State partner agencies, including economic development agencies.

<u>Federal STC Program: Benefits and Administrative Funds - Fiscal Reporting</u>

Because of the separate appropriation for Federal STC program benefits and administrative funds, states must track and report STC benefit and administrative obligational authority and expenditures separately. Therefore, for a Federal STC Program, states must establish a separate fund ledger and must submit a separate ETA 9130, Federal Financial Report (OMB No. 1205-0461) for each type of expenditure.

5. **<u>Staffing Guidelines</u>.** Federal laws and regulations governing UC require that services be administered by "government" personnel. A state's receipt of the UC administrative grant requires that the state law provide for "[s]uch methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis…) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." This means that state activities supporting the administration of the UC program that are inherently governmental functions must be merit-staffed. See UIPL No. 12-01 and its Change 1. Accordingly, under section 303(a)(1), SSA, states must use merit staff to administer the inherently governmental functions of their state STC programs. Further, section 2163 of the Act allows a state without a state STC program to operate a Federal STC program in accordance with the definition under section 3306(v), FUTA, on a temporary basis through an agreement with the Department. To ensure that states adopting the temporary Federal STC program as a first step to adopting a permanent state STC program are able to make the transition to a state STC program that complies with section 3306(v), FUTA, states are strongly encouraged to use merit staff to administer the inherently governmental functions of their temporary Federal STC programs.

6. **<u>Required Reporting</u>.** States that operate Federal STC programs must submit program data under existing state STC reporting requirements. Instructions for all STC required reports can be found in ET Handbook No. 401, including specific line-by-line reporting instructions for the reports listed below. State reporting for STC includes the following:

- Monthly reporting of claims and payment activities on the work-share specific form, ETA 5159, *Claims and Payment Activities* (OMB No.1205-0010).
- Weekly reporting of initial and continuing claims, as well as equivalents, on the form ETA 539, *Advance Weekly Initial and Continued Claims* (OMB No. 1205-0028).
- Monthly reporting of time lapse for first payments on the work-share specific form, ETA 9050, *First Payment Time Lapse* (OMB No. 1205-0359).
- Monthly reporting of time lapse for continued weeks on the work-share specific form, ETA 9051, *Continued Weeks Compensated Time Lapse* (OMB No. 1205-0359).

In addition, Section 2163 of the Act requires additional reporting beyond those mentioned above. These additional reporting requirements are detailed in the "Reporting Instructions" section of Attachment II to this UIPL. This UIPL and its attachments were submitted to OMB for Paperwork Reduction Act approval and were approved by OMB (OMB Number 1205-0499, expires December 31, 2012) on June 14, 2012. The Employment and Training Administration (ETA) is currently in the process of renewing this collection, and extending its authorization to collect data related to the Federal STC program through 2015.

7. **Agreements.** As previously mentioned, states will act as agents of the Secretary in administering a Federal STC program and must agree to operate the program in accordance with this guidance and the attached operating instructions. Interested states should contact the appropriate Regional Office to request a Federal STC Agreement, which will be signed by the Secretary (see Attachment III) and to request the Addendum to the Fiscal Year 2012 UI Program Annual Funding Agreement (see Attachment IV). The Federal STC Agreement will be executed once the state Administrator signs and returns it to the Department. The Secretary reserves the right to terminate the agreement(s) if the terms of the agreement(s) are not met.

8. **Technical Assistance.** Section 2164 of the Act authorizes the Secretary "to use 0.25 percent of funds available under subsection (g) to provide for outreach and to share best practices with respect to this section and STC programs." Accordingly, the Department is developing a technical assistance strategy that will include webinars, additional guidance, and the collection of noted practices to help states implement STC programs.

   A webinar about Federal STC and related reporting requirements will be conducted upon release of this guidance. Other technical assistance will include an STC toolkit that will be posted on the UI Community of Practice Web site at http://ui.workforce3one.org.

9. **Action Requested.** State Administrators are requested to distribute this advisory to appropriate staff.

10. **Inquiries.** Questions should be addressed to the appropriate Regional Office.

11. **Attachments.**

Attachment I	Subtitle D—Short-Time Compensation Program (STC)
Attachment II	Operating Instructions for Federal Short-Time Compensation (STC)
Attachment III	Federal-state Agreement (Draft)

Attachment IV Unemployment Insurance (UI) Program FY 2012 Annual Funding Agreement Addendum (Draft)