

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DL
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 4-15

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Disclosure of Confidential Unemployment Compensation Information to State Health Insurance Exchanges

1. **Purpose.** To provide guidance to state unemployment insurance (UI) agencies on disclosure of confidential unemployment compensation (UC) information to health insurance exchanges for purposes of implementing the Affordable Care Act (ACA).

2. **References.**

- Section 303(a) of the Social Security Act (SSA; 42 USC 503(a));
- Section 303(f), SSA (42 USC 503(f));
- Section 1137, SSA (42 USC 1320b-7);
- Section 6103(l), Internal Revenue Code (IRC) (26 USC 6103(l));
- Affordable Care Act, Pub. L. 111-148; and
- 20 CFR Part 603, *Federal-State Unemployment Program (UC): Confidentiality and Disclosure of State UC Information; Final Rule.*

3. **Background.** In 1984, Congress enacted section 1137, SSA, which requires that certain Federal or federally-funded programs exchange data through an Income and Eligibility Verification System (IEVS) for purposes of determining eligibility for benefits provided by those programs. Among the programs and agencies required to participate in IEVS are: UC; Medicaid; the Supplemental Nutrition Assistance Program; Temporary Assistance for Needy Families; other SSA programs such as Supplemental Security Income; and the Department of Housing and Urban Development’s (HUD) public housing programs. Section 303(f), SSA, requires, as a condition of states receiving UC administrative grants, that “state law provide that information shall be requested and exchanged for purposes of income and eligibility verification. . . .”

More recently, Congress enacted the ACA to provide for health insurance exchanges to permit certain individuals to obtain health insurance, including some at a reduced cost by way of Federal tax credits. Under section 1413(c)(2), ACA, health insurance exchanges are required to “participate in a data matching arrangement for determining eligibility for participation in the program.” To determine eligibility, the health subsidy program, under

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section 1413(c)(3)(A)(ii), ACA, must “determine such eligibility on the basis of reliable, third party data, including information described in sections 1137 . . . of the Social Security Act, obtained through such an arrangement.” For this reason, health insurance exchanges seek to obtain confidential UC information through IEVS to determine individuals’ eligibility for Medicaid and health insurance exchange subsidies.

Department of Labor (Department) regulations at 20 CFR part 603, issued in September 2006, address the requirement, as a method of administration to insure full payment of UC when due under section 303(a), SSA, that states maintain the confidentiality of UC information. These regulations specify to whom, and under what circumstances, confidential UC information may, or must, be disclosed. Subpart C of part 603 governs the required disclosure of confidential UC information to participants in IEVS; the IEVS regulations predated the 2006 final rule and were not amended by that rule except for renumbering. Under section 1137, SSA, the Medicaid program is a required participant in IEVS and is therefore covered under the mandatory disclosure requirements of 20 CFR part 603, subpart C. As described below, the health insurance exchange is treated as a Medicaid program for IEVS purposes and, thus, is also covered by the mandatory disclosure requirements.

- 4. Applicability of section 1413, ACA, to state UC programs.** The Department of Health and Human Services (HHS) has responsibility for administering both IEVS and the ACA provisions applicable to health insurance exchanges. HHS requires that IEVS be used to determine eligibility for Medicaid (as required for that program under section 1137(b)(2), SSA, and 20 CFR 603.21(b)), each state’s Children’s Health Insurance Program (CHIP), and advance payments of the premium tax credit, where the state Medicaid agency will request information from the state UC agency as it currently does to determine eligibility for Medicaid. HHS has determined that, based on section 1413(c), ACA, and section 1137, SSA, participants in IEVS are required to share wage information identified in section 1137(a)(2), SSA, subject to the safeguards requirement in section 1137(a)(5). HHS determined that, in each state, participants in IEVS are required to share with the health insurance exchange, which is the entity making Medicaid eligibility assessments and determinations.

With respect to protecting confidential UC information, the safeguards in section 1137(a)(5)(A), SSA, apply to data exchanges for, or with, the health insurance exchanges. This includes the requirement that information released under section 6103(l) of the Internal Revenue Code be exchanged only as needed to assist in the valid administrative needs of authorized programs.

Thus, whatever information a state UI agency has been sending to an IEVS required participant for Medicaid eligibility purposes must, under section 1137, SSA, be sent to the health insurance exchange for purposes of determining eligibility under the ACA for both participation in the exchanges to obtain private health insurance, and for Federal subsidies for such insurance. This applies both to wage information and to claims information, if that information is requested.

5. **Action Requested.** State administrators should forward this information to the appropriate UI agency personnel.
6. **Inquiries.** Please contact your Regional Office with questions or concerns.