

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO.17-19

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH
Assistant Secretary

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SUBJECT: Federal Requirements Regarding State Unemployment Compensation (UC) Alternative Base Period (ABP) Determination Procedures

1. **Purpose.** To reemphasize the federal requirements pertaining to monetary eligibility determinations and to establish minimum procedures to protect applicant benefit rights for ABP determinations.

2. **Action Requested.**

The Employment and Training Administration (ETA) requests State Administrators to:

- a. review their state laws, regulations, and policies, and ensure procedures and processes concerning the state's ABP meet federal requirements; and
- b. provide this guidance to appropriate staff.

3. **Summary and Background.**

- a. Summary — This Unemployment Insurance Program Letter (UIPL) reemphasizes the federal law requirements related to ABP determinations.
- b. Background — Every state uses a base period, or base year, to determine a UC applicant's monetary eligibility, which refers to whether the UC applicant has earned sufficient recent wages to qualify for UC. Typically, the base period consists of four calendar quarters. Many states provide both a "regular" base period and, for applicants who do not qualify for UC under the "regular" base period, an ABP. Most states define the regular base period as the first four of the last five completed calendar quarters preceding the effective date of an initial UC claim. Depending on when the initial UC claim is filed and how the state defines its base period, wages from the current calendar quarter (filing quarter) and the most recently completed calendar quarter (lag quarter) are generally not included in the regular base period, and therefore are not used in determining monetary eligibility for UC. The ABP allows the use of an applicant's

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wages and employment in the four most recently completed calendar quarters preceding the effective date of the UC claim to meet the base period earnings requirement. The U.S. Department of Labor (Department) interprets the definition of “base period wages” contained in the Standard for Claim Determinations—Separation Information, Employment Security Manual (ESM), Part V, Sections 6013(C)(2)(a)¹ to include both regular and ABP wages.

Section 303(a)(1) of the Social Security Act (SSA) requires, as a condition for a state to receive administrative grants for its UC program, that the state law provide for “such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.”

In the ESM, Part V, Section 6011, the Department interprets Federal UC law requirements to mandate that a state law and the state’s methods of administration include provisions and processes that will insure:

- Individuals who may be entitled to unemployment compensation are furnished such information to reasonably afford them an opportunity to know, establish, and protect their rights under the state’s unemployment compensation law, and
- The state agency obtains and records such information in a reasonable time for the prompt determination and review of benefit claims to insure the payment of benefits to individuals to whom benefits are due.

The state agency must take the initiative in the discovery of facts. Section 6013(A)(1) of Part V of the ESM states that the responsibility “may not be passed on to the claimant or the employer. In addition to its own records, this information may be obtained from the worker, the employer, or other sources.” Failure by a state to fulfill its responsibility to obtain the information creates a conflict with Section 303(a)(1) of the Social Security Act.

As of 2018, 39 states have ABP provisions in state law. In reviewing the reported state data from the 2018 Benefit Accuracy Measurement (BAM) Denied Claim Accuracy measures, in states with ABP provisions, only an estimated 61 percent of applicants who were monetarily denied benefits received a determination regarding their alternative base period eligibility.

4. Required Methods of Administration Regarding an ABP.

States must ensure they are following the methods of administration when processing claims involving an ABP:

- When determining monetary eligibility for UC, state agencies must advise the applicant of the state’s qualifying requirements and his/her potential eligibility under its law.

¹ Codified at 20 Code of Federal Regulations (CFR) Part 602, Appendix A; Parts 614, 617, and 625, Appendix B.

- A state must give each applicant a written notice of his or her monetary eligibility. This must always include a determination under the state's regular base period **and**, if the state has an ABP and has considered monetary eligibility under its ABP provisions (whether the claim was determined monetarily eligible or monetarily ineligible), the state must also provide a determination under the ABP.
- When a UC applicant performed work in two or more states during the base period, and there is potential eligibility for a combined-wage claim (CWC):
 - the state must advise individuals of any potential eligibility under its law for a regular base period, and if applicable, of any potential eligibility under its law for an ABP;
 - the state must advise individuals of any potential eligibility (i.e., maximum weekly benefit amounts) under the other state's regular base period, and, if applicable, the other state's ABP;
 - the state must provide contact information for filing in the other states(s) where the individual worked; and
 - the state must allow the individual the opportunity to withdraw the initial application and file in another state, if the applicant decides to pursue such claim.

For example, if the individual files in State A, State A must advise the individual of its qualifying requirements and his/her potential eligibility (including weekly benefit amount, maximum benefit amount) for benefits (if any) under its regular base period and ABP. The state must advise the individual that s/he has the option to file in any other state where s/he has employment and wages, and of the potential maximum benefit amounts in the other state. The State must advise the individual of differences in weekly benefit amounts and other qualifying requirements (i.e., that state laws vary). If the individual wishes to explore options with any other state(s), the State A must provide information about how to contact any such state(s).

An individual may establish a CWC in any state in which the individual has employment and wages in the base period(s) of the state and qualifies based on combining wages in multiple states. When an individual is eligible for a CWC under the regular base period in State A, but only the ABP in State B, the state must afford the claimant the option to select the claim that is most advantageous. For additional information on state responsibilities on CWCs, see UIPL No. 01-09.

States should follow the instructions outlined in the ESM, Part V, Sections 6013(C)(2). The written notice of monetary eligibility must contain the information specified below for both the regular base period and ABP (if the state used the ABP to calculate monetary eligibility), unless an item is specifically not applicable.

The notice of monetary eligibility must include an explanation of all potential base periods considered and the reason why the applicant is:

- monetarily eligible under the state's regular base period; or
- monetarily eligible under the state's ABP; or
- is not monetarily eligible under either base period.

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

6. **References.**

- Section 303(a) of the SSA, 42 U.S.C. 503(a);
- ESM. Part V, Sections 6010–6015, as codified in 20 Code of Federal Regulation (CFR) Part 602, Appendix A; 20 CFR Part 602, Appendix B; 20 CFR Part 614, Appendix B; and 20 CFR Part 617, Appendix B; and 20 CFR Part 625, Appendix B.

7. **Attachments.** Not Applicable.