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ADVISORY: **TRAINING AND EMPLOYMENT GUIDANCE LETTER NO.** 20-11

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
UNEMPLOYMENT INSURANCE DIRECTORS
EMPLOYMENT SERVICE DIRECTORS

FROM: JANE OATES
Assistant Secretary

SUBJECT: Reemployment Services and Reemployment and Eligibility Assessment Activities for Recipients of Emergency Unemployment Compensation

1. Purpose. To advise states of new requirements for the provision of reemployment services and reemployment and eligibility assessments (RES/REA) to individuals who begin receiving Emergency Unemployment Compensation (EUC) First Tier benefits or who transition from First Tier to Second Tier benefits[1] on or after March 23, 2012, and to provide information on related funding and reporting requirements.

2. References.

- *Middle Class Tax Relief and Job Creation Act of 2012,* Public Law (P.L.) 112-96 (February 22, 2012), Title II, Sections 2001-2184 (Extended Benefits, Reemployment and Program Integrity Improvement Act);
- *Supplemental Appropriations Act, 2008*, as amended, P.L. 110-252 (June 30, 2008), Title IV, Sections 4001-4007 (EUC Act);
- Federal Unemployment Tax Act (FUTA);
- Wagner-Peyser Act, as amended, 29 U.S.C. 49 et seq.;
- Workforce Investment Act of 1998 (WIA), as amended, 29 U.S.C. 2801 et seq.;
- WIA Regulations, 20 CFR parts 652 and 660-671;
- Unemployment Insurance Program Letter (UIPL) No. 23-08, *Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment Compensation,* and its Changes 1-6;

[1] EUC First and Second Tiers are temporary Federal extensions of unemployment benefits payable to individuals who have exhausted a claim and are no longer eligible for regular compensation. First Tier benefits are payable for up to 20 weeks following the exhaustion of regular compensation (up to 14 weeks for any new EUC claim filed after September 2, 2012). Second Tier benefits are payable for up to 14 weeks following the exhaustion of the First Tier benefits.

RESCISSIONS None	EXPIRATION DATE Continuing

- UIPL No. 04-10, *Extension of Temporary Provisions – Emergency Unemployment Compensation, 2008, Federal Additional Compensation, and Extended Benefits*, and its Changes 1-9; and
- UIPL No. 12-01, *Outsourcing of Unemployment Compensation Administrative Functions*, and Change 1.

3. Background. The U.S. Department of Labor (Department) is issuing this guidance letter in accordance with the EUC Act, as amended by Section 2142 of the *Middle Class Tax Relief and Job Creation Act of 2012* (the Act), which requires guidance by the Secretary of Labor on the implementation of the RES/REA activities newly required under the Act.

Providing effective reemployment services to the unemployed (including the long-term unemployed) and minimizing erroneous payments are high priorities for the Department and its partners, the state workforce agencies. States have demonstrated the cost benefits of providing reemployment services to unemployed individuals through the One-Stop Career Centers. [2] Providing reemployment assistance to those who are unemployed can result in more rapid reemployment, shorter claim duration, [3] and fewer erroneous payments of unemployment compensation (UC).

Section 2142 of the Act adds new subsection (i) to Section 4001 of the EUC Act, requiring that states operating an EUC program provide RES/REAs to individuals who begin receiving EUC First Tier benefits or who transition from First Tier to Second Tier benefits on or after the 30th day after the date of enactment of the Act, or March 23, 2012. For the current statutory duration of the EUC program, which is scheduled to expire on January 2, 2013, the Department projects that approximately 3.2 million individuals will file for First Tier benefits and that 1.4 million claimants currently receiving EUC First Tier benefits will transition to EUC Second Tier. The Act requires states to provide RES/REA services (as defined in the Act) to such individuals receiving EUC.

The reemployment services and in-person reemployment and eligibility assessments required by Section 4001(i)(2)(A) of the EUC Act, as amended, are:

1) The provision of labor market and career information;
2) An assessment of the skills of the individual;
3) Orientation to the services available through the One-Stop Centers established under Title I of WIA; and
4) A review of the eligibility of the individual for EUC relating to the job search activities of the individual. (See the description of new Section 4001(b)(4) of the EUC Act below.)

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[2] Jacob Benus, Eileen Poe-Yamagata, Ying Wang, and Etan Blass, IMPAQ International, Inc., *Reemployment and Eligibility Assessment (REA) Study – FY 2005 Initiative*, http://wdr.doleta.gov/research/eta_default.cfm?fuseaction=dsp_resultDetails&pub_id=2349&bas_option=Title&start=1&usrt=4&stype=basic&sv=1&criteria=rea (March 2008).

[3] Louis Jacobson, (February 1991). "Congressional Testimony on the Effectiveness of the Employment Service in Aiding UI Claimants." Before the Subcommittee on Human Resources, House Committee on Ways And Means, Washington D.C.

States have the option to provide the following additional services described in Section 4001(i)(2)(B) of the EUC Act, as amended:

1) Comprehensive and specialized assessments;
2) Individual and group career counseling;
3) Training services (the Department has interpreted this to mean referrals to appropriate training);
4) Additional reemployment services; and
5) Job search counseling and the development or review of an individual reemployment plan that includes participation in job search activities and appropriate workshops.

Section 4001(i)(1)(B) of the EUC Act, as amended, requires individuals (who begin receiving EUC First Tier benefits or who transition from First Tier to Second Tier benefits on or after March 23, 2012) who are referred to RES/REA services to participate in these RES/REA services to receive these benefits. The statute also conditions weekly eligibility of these individuals – as it now does for all EUC claimants – on meeting the "actively seeking work" requirement described below (under New Work Search Provisions for the EUC Program). Section 4001(i)(3) more specifically conditions continued EUC eligibility for the week in which an individual is referred to RES/REA activities upon that individual's participation in these services or activities, unless the state UC agency determines that the individual has completed participation, or there is justifiable cause for failure to participate or complete participation, as determined by the Department in this guidance. (See section 5.g., in this Training and Employment Guidance Letter (TEGL)).

New Work Search Provisions for the EUC Program

New Section 4001(b)(4) of the EUC Act conditions EUC eligibility upon a claimant being "able to work, available to work, and actively seeking work." New Section 4001(h)(1) defines "actively seeking work" to mean that an individual must:

- Register for employment services as prescribed by the state agency;
- Engage in an active search for work that is appropriate in light of the labor market and the individual's skills and capabilities, and includes an appropriate number of employer contacts as determined/prescribed by the state;
- Maintain a record of his/her work search, including employers contacted, method of contact, and date of contact; and
- When requested, provide such work search record to the state agency.

Notification of Work Search Requirements

States must immediately begin providing notification to all EUC claimants that they must meet the new EUC work search requirements. (See UIPL No. 04-10, Change 9). Note: An individual is not required to seek work when such individual is participating in a state approved training

program while receiving benefits (see Section 3304(a)(8), FUTA).[4] In addition, new section 4001(h)(1)(A) requires ES registration "in such a manner and to such extent as prescribed by the State agency." Therefore, if the agency does not require registration for union members, the state does not have to require registration. Under Section 4001(h)(1)(B), which requires an active search for work consistent with standards established by the state, a state may use standards that only require the worker to seek work through a hiring hall. Further, the state may also determine that the appropriate number of work search contacts for an individual on a short term layoff or with a letter of "intent to hire" from an employer is zero since the individual is job attached.

Note: The requirement under the Act that states must audit a random sample of all EUC recipients' work search activities is a new requirement that will be addressed in separate guidance issued in the near future through a UIPL.

4. Agreements and Implementation Planning. New Section 4001(i) of the EUC Act requires that these new services be provided under each state's EUC Agreement with the Secretary of Labor, which provides the authority to administer the EUC program in the state. Accordingly, the Department executed a second Addendum to the existing Agreements to implement the requirement that the states provide RES/REA services. Included in the Addendum is the requirement for the governor to designate either the state UC agency or the state Employment Service (ES) agency as the agency responsible for ensuring these activities are properly administered under the EUC Act (see section 7 below, Staffing Guidelines).

To implement this new program, states will need to develop processes and service delivery strategies to meet the requirements for providing RES/REA services to individuals who begin receiving EUC First Tier benefits or who transition from First Tier to Second Tier benefits on or after March 23, 2012. Developing these processes is a cross-program responsibility and, regardless of which agency receives the funds, states must ensure collaboration among the state's UC and workforce programs, as well as Local Workforce Boards and One-Stop Career Centers in the development of an implementation strategy in order to ensure successful implementation. States are strongly encouraged to consider development of a cross-program agreement or a Memorandum of Understanding to formalize the implementation strategy, as appropriate.

The requirements for RES/REAs are similar to the requirements for the UC Reemployment and Eligibility Assessment (REA) initiative that applies to UC claimants receiving regular benefits (these UC REA programs are currently operated by 41 states). States currently implementing REAs for their regular UC program should consider using the procedures and infrastructure already in place for the current REA program, such as processes and forms currently used for call-in notices and referrals, feedback loops between the UC program and reemployment service providers, and staff training materials. It is important to note, however, that the new RES/REA program will be serving significantly larger numbers of claimants, which may require modifying these existing REA processes.

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[4] That section provides: "...(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work)...."

States are strongly encouraged to provide RES/REAs as an integrated package, both for efficiency and because it can provide better reemployment outcomes for EUC claimants. A recent evaluation of the state UC REA program in Nevada found that when services are provided by the same staff for the entire set of UC REA services and reemployment services, the results were very positive. An evaluation of this program is contained in the report *Impact of the Reemployment and Eligibility Assessment (REA) Initiative in Nevada*, which will be posted on the Department's Web site in the near future.

5. Reemployment Services and Reemployment and Eligibility Assessment Activities

The statute, at new section 4001(i)(2), requires REAs to be "in person." Consistent with this requirement, states must, at a minimum, require an EUC claimant's presence to perform the review of eligibility and review of the claimant's work search. Other RES/REA activities may be carried out in person or remotely at the state's discretion. That is, provided the claimant reports to the One-Stop Career Center or One-Stop affiliate office and is physically present for this activity (eligibility and work search review), a state may, if it deems it appropriate, provide other RES/REA services remotely. In cases where the state agency determines that reporting in person would impose a hardship on a claimant, such as when the office responsible for service delivery is located in a remote location or the claimant must travel an extraordinary distance, a state may determine that the "in person" requirement may be managed remotely by phone or other means.

States may elect to provide group orientation sessions, thus providing a complete overview of services to a large number of claimants at the same time. However, a review of the individual's work search activities must be done on an individual basis to determine whether the individual has met the work search requirements under the Act and as prescribed by the state.

a. Who is required to participate in the RES/REA?

Individuals who begin receiving EUC First Tier benefits or who transition from First Tier to Second Tier benefits on or after March 23, 2012 will be required to report to the appropriate One-Stop Career Center (or to an affiliate One-Stop or Mobile Center) for their reemployment and eligibility assessment. These individuals must participate in RES/REA activities as a condition of eligibility for receipt of EUC benefits, unless they have already completed participation in such services or there is justifiable cause for failure to participate or complete participation as explained in this section below (see item 5.g.). As stated below, for purposes of this requirement, the Department interprets "completion" to include receipt and completion of similar services while collecting regular UC or other types of unemployment benefits. Individuals receiving RES/REA as they enter EUC First Tier on or after March 23, 2012 are not required to receive these services a second time if and when they augment to EUC Second Tier.

States must contact individuals by the third (3rd) week in their claim series for their current EUC Tier to notify them that they have been scheduled to report to a One-Stop Career Center for an eligibility assessment and appropriate reemployment services. The in-person RES/REA must be scheduled by the individual's sixth (6th) week in their EUC (First/Second Tier) claim series. States must advise selected claimants that failure to participate in the required RES/REA, absent justifiable cause, as well as any additional reemployment services to which they are referred, will

make them ineligible for benefits (see item 5.g.). Failure to participate means failure to attend all scheduled activities in the required RES/REA. Individuals who fail to participate in the RES/REA may be rescheduled, as appropriate. Rescheduling these services may require going beyond the sixth (6th) week in an individual's claim series; however, states must reschedule the RES/REA as soon as feasible.

b. What constitutes RES/REA activities?

As was the case with RES activities funded in Program Year (PY) 2001 through PY 2005 and again under the American Recovery and Reinvestment Act of 2009, and as is currently required by the existing REA program, RES/REAs must be provided to individuals through One-Stop Career Centers (which may include affiliate or mobile One-Stop Centers).

Required RES/REA services and activities are described below in more detail:

- Provision of labor market and career information, including provision of materials or information intended to assist individuals in making occupation or career decisions. This information may be provided in person or via online resources. To comply with this requirement, states may use their own services and/or elect to:
    - Direct individuals to online resources within their state and/or national tools such as the Labor Market Information Center, which provides detailed labor market data to identify current employment trends and fast growing occupations in a state or local area, at www.careeronestop.org/lmi/LMIHome.asp; and/or
    - Direct individuals to online career exploration available within their state or national career exploration tools such as *mySkills myFuture*, which offers personalized career suggestions based on a person's interests and level of work experience; or *MyNextMove*, a skill transferability tool that allows job seekers to learn more about their career options.
- An assessment of the skills of the individual. This assessment must focus on occupational assessments of skill level, aptitudes, and individual abilities. To comply with this requirement, states may conduct these assessments in person or via online tools.[5] States may elect to:
    - Direct individuals to the Skills Profiler (www.careerinfonet.org/skills/) to create a list of their skills and match individuals to jobs with those skills requirements; and/or
    - Direct individuals to *mySkills myFuture*, which offers personalized career suggestions based on a person's interests and level of work experience, or *MyNextMove*, a skill transferability tool that allows job seekers to learn more about their career options.
- Orientation, in groups or individually, to the services available through the One-Stop Career Centers and its partner organizations. States must ensure that individuals are able to access the full array of services available through the public workforce system; and

[5] For definitions pertaining to skill and competency assessments, states should refer to Training and Employment Notice 21-07, *Effective Use of Assessment in the Public Workforce Investment System and Transmittal of Testing and Assessment: A Guide to Good Practices for Workforce Investment Professionals*, http://wdr.doleta.gov/directives/attach/TEN/ten2007/TEN21-07.pdf].

- A review of the individual's continued eligibility for EUC with respect to the "actively seeking work" requirements as defined under the Act (see section 2141 of the Act, and Section 3 of this TEGL) and under state law. This aspect of the assessment must include a review of the individual's work search log(s), conducted in person, to ensure it contains the required information and otherwise complies with the state's standards. It must also include a review of whether the individual is registered for employment services as prescribed by the state agency.

c. What are the participation requirements to continue receiving EUC benefits?

Those individuals required to participate in a scheduled RES/REA must report "in person" to a One-Stop Career Center, as directed by the state UC agency. Although states may elect to provide group orientation sessions for the reemployment assessment, the review of the individual's work search record(s) must be conducted on an individual basis to determine whether the individual has met the work search requirements prescribed by the state.

Individuals must be notified of the new EUC work search requirements as well as the state's standards for their work search before their scheduled RES/REA so that they are aware of these new requirements and the need to maintain a record of their work search activities, as appropriate. Individuals who do not meet the work search requirements must be referred to the UC agency for adjudication. An individual who fails to report for a scheduled RES/REA, as instructed, must be referred for adjudication by the UC agency to determine whether the individual had "justifiable cause" for his/her failure to participate as required (see item 5.g. below). In addition, any other eligibility issues detected during the RES/REA must also be referred to the UC Agency for adjudication, as needed (see item 5.e.).

Since states must provide RES/REAs to all individuals who begin receiving EUC First Tier benefits or who transition from First Tier to Second Tier benefits on or after March 23, 2012, states must begin notifying these individuals by the third week in their EUC claim series that they must report for the required RES/REA at a One-Stop Career Center. Unless the state determines the individual has already received similar services or waives the required participation for an individual, RES/REAs must be scheduled for new EUC claimants or EUC First Tier claimants as of March 23, 2012 that augment to EUC Second Tier by week six (6) in an individual's EUC claim series or week six (6) of Second Tier respectively, except when not possible, for example, due to rescheduling.

As noted above, states must advise individuals that, under the amended EUC statute, failure to participate in the RES/REA activities required by the state, as well as any additional reemployment services to which they are referred, may affect their eligibility for EUC. However, states may choose to allow claimants some flexibility with respect to individual appointments and sessions in the course of the broader RES/REA process. State UC agencies are responsible for developing clear and consistent processes for managing the scheduling process to be implemented by staff performing RES/REA services. Based on its policies and procedures, states may choose to accommodate and reschedule individuals who contact the appropriate agency before their RES/REA appointment to request a change in the scheduled date or time, for example, for reasons such as a scheduled job interview. State UC agencies need to ensure that

the notice advising claimants of their scheduled assessment also provides information about how to contact the agency, if needed, to request that the RES/REA be rescheduled.

d. What constitutes an eligibility assessment?

States must review individuals' continued eligibility for EUC under the new EUC work search requirements. States are encouraged to use eligibility review forms or on-line eligibility review programs that individuals can complete before the assessment to facilitate the efficiency of the assessment and eligibility review. States are also encouraged to provide standard work search logs to claimants for maintaining the required work search information (i.e., employer name, method of contact, and date of contact). States must also advise these claimants that these work search records/information will be reviewed during the RES/REA.

e. What types of issues will states need to adjudicate with respect to the RES/REA?

Any UC eligibility issues that arise during the assessment(s) must be referred to the UC agency for adjudication. A claimant who failed to meet the prescribed work search requirements must be referred to the UC agency for adjudication. Also, states must adjudicate whether an individual had "justifiable cause" for failure to participate in a required RES/REA. The determination of "justifiable cause" will be made under the "good cause" provisions of State law. Unless otherwise excused from attendance, individuals who fail to participate in a particular RES/REA activity, or miss a related appointment, for a given week must be rescheduled as a condition of continued eligibility unless the state determines that "justifiable cause" exists to waive the requirement to participate in RES/REA services or activities (see item 5.g.).

Determinations of eligibility will be made for the week under review or the week in which the individual failed to participate. As a part of the adjudication process, states must conduct appropriate fact-gathering including providing claimants the opportunity to provide information, for example, about the reason(s) for failing to participate in the scheduled assessment or in failing to participate in reemployment services to which they are referred.

States often require individuals to report to the state agency to participate in services or to provide additional information about an issue. When an individual fails to report as required, the state may apply its law provisions on ineligibility for UC due to failure to report until the individual complies with the reporting requirement (sometimes referred to as an indefinite denial).

f. What optional services may be provided to individuals receiving EUC?

Although the statute does not require them, the Department encourages states to provide enhanced services to these long-term unemployed individuals to the extent possible, either using REA/RES funds or referring individuals to existing services available through the One-Stop Career Center. These may include:

- Comprehensive and specialized assessments, including staff-assisted interviews and testing of educational skills and work readiness;

- Work search and career planning, including using skills assessment and testing techniques and other methods to identify the individual's transferable skills and other occupations and/or industries in which these skills can be used;
- Individual and/or group career counseling, including provision of materials, suggestions, or advice intended to assist the job seeker in making occupational or career decisions;
- Training by third-party service providers for individuals who need to update their skills to remain competitive in the local labor market;
- Additional staff-assisted reemployment services, such as assessments to determine need and eligibility for supportive services, referrals to WIA-funded services, and referrals to employers; and
- Job search counseling and the development or review of an individual reemployment plan, including participation in job search activities and appropriate workshops including reemployment job clubs and/or networking support groups.

States should consider the particular barriers to reemployment faced by the long-term unemployed in the state, and ensure that the reemployment services provided are appropriate to the individuals' needs (20 CFR 652.209). With the limited funds available, and large numbers of individuals who must participate in an RES/REA, the Department encourages states to use the reemployment and eligibility assessments to help identify the most effective mix of services for different groups of individuals. For example, states may elect to identify and offer the enhanced services described above to individuals who, based on their reemployment and eligibility assessment, would not likely be a candidate for immediate reemployment in the local labor market. For individuals who, based on their reemployment and eligibility assessment, are more competitive for work in the local labor market, states may choose to direct them only to the mandatory services described above.

g. Under what circumstances may states waive the participation requirements?

The EUC Act makes participation in RES/REA services a condition of eligibility for individuals who begin receiving EUC First Tier benefits or who transition from First Tier to Second Tier benefits on or after March 23, 2012. Such individuals must be referred to RES/REA services, unless the state UC agency determines they have completed all of the activities required for participation, or there is "justifiable cause" for their failure to participate or complete the necessary activities, in accordance with the Department's guidance.

Each state will determine whether a waiver is appropriate. States must have documentation of the reason(s) for an individual's waiver of the participation requirement. For example, when an individual has completed similar services, the claim record should indicate that this is the reason the individual's participation was waived. The statute authorizes a waiver in cases where an individual "has completed participating in such services or activities." The Department interprets this to include participation in similar services while collecting regular UC or other types of unemployment benefits.

The statute also provides for a waiver if the state UC agency determines that there is "justifiable cause" for failure to participate or to complete participation. States may waive participation if the reason for failure to report or participate in reemployment services or reemployment and eligibility assessments is considered "good cause" under the state's UC law. In addition, states

may determine that there is "justifiable cause" when, for example, an individual would have to commute an unreasonably long distance (as determined by the state) to report to a One-Stop Career Center for the RES/REA.

It would be appropriate to grant a waiver when within the last 3 months an individual participated in an REA while receiving regular UC in a state that is operating a UC REA program. It would also be appropriate to grant a waiver when an individual participated in an eligibility review for UC as part of a state's Reemployment and Eligibility Assessment program for state UC claimants or Eligibility Review Program (ERP) that includes an orientation to or some reemployment service(s), or previously received reemployment services that the state deems appropriate to meet the needs of the individual. A waiver could also be granted for an individual already receiving similar services as they transition to EUC Tier I. A waiver is also appropriate for EUC Tier II claimants who have received these services while participating in Tier I; as stated in section 5.a. above, individuals receiving RES/REA as they enter EUC Tier I on or after March 23, 2012 are not required to receive these services a second time if and when they augment to EUC Tier II.

6. Administrative Funding. The EUC statute, as amended, appropriates funds from the general fund of the U.S. Treasury to pay administrative funding related to these RES and REA activities. The statute also instructs the Department to determine each state's administrative costs by multiplying the number of individuals who will receive reemployment services and reemployment and eligibility assessments by $85.00.

a. Obligational Authority. The Grant Officer will assign a separate line on either the UC or the ES program notices of obligational authority for RES/REA administrative grant funds, and a separate sub-account for these funds will be set up in the Payment Management System (PMS) for states to draw down administrative funds. Upon establishment of the PMS account and access to the funds being apportioned by the Office of Management and Budget (OMB), the Department will advance to state agencies funding equal to three months of projected RES/REAs multiplied by $85.00.

b. Administrative Fund Accounting. Because of the separate appropriation for these RES/REA administrative funds, states must track and report these administrative expenditures and obligations separately. Therefore, states must establish a separate fund ledger and must submit a separate Form ETA 9130 for the EUC RES/REA program.

c. Time Distribution. To ensure that EUC RES/REA costs are correctly tracked, states must charge time used for EUC RES/REA activities to a separate EUC RES/REA fund ledger.

To expedite implementation of the new requirements, the Department's Grant Officer will issue a Notice of Obligation (NOO) indicating the amount obligated to the state and the purpose for which the funds are to be used. The signature of the governor's designee on the Addendum to the EUC Agreement will commit the state to carrying out the EUC Act's new requirements.

7. Staffing Guidelines. Federal laws and regulations governing UC and ES require that services in those systems be administered by government personnel. The merit staffing requirement for the UC program is established in Social Security Act section 303(a)(1): That section conditions

a state's receipt of a UC administrative grant on the state law providing 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, generally, state activities supporting the administration of the UC program must be merit staffed. The Department enforces this requirement, subject to the personnel standards established by the U.S. Office of Personnel Management, to which interpretive authority for this requirement was transferred by the Intergovernmental Personnel Act of 1970. The Department, extending to states implementing this Federal merit staffing requirement the general principles developed for the Federal merit staffing system, has waived the requirement for state UC activities that are "commercial" in nature, but continued to require that "inherently governmental" functions be performed by state government personnel. See, for example, UIPL No. 12-01, Outsourcing of Unemployment Compensation Administrative Functions, and Change 1 to that UIPL.

For ES, the Department has long interpreted the Wagner-Peyser Act to require merit staffing for the labor exchange activities funded under that Act, and has codified that requirement in the regulations at 20 CFR 652.215 and 652.216. Section 652.215 provides, in part:

> ...[T]he Secretary requires that labor exchange services provided under the authority of the Act, including services to veterans, be provided by State merit-staff employees. This interpretation is authorized by and consistent with the provisions in sections 3(a) and 5(b) of the Act and the Intergovernmental Personnel Act (42 U.S.C. 4701 *et seq.*). The Secretary has exercised the legal authority under section 3(a) of the Act to set additional staffing standards and requirements and to conduct demonstrations to ensure the effective delivery of services provided under the Act. No additional demonstrations will be authorized.

For these reasons, any inherently governmental UC activities, and any activities funded under the Wagner-Peyser Act, must be performed by merit staff.

Consistent with these requirements, certain of the required or optional activities concerning the new EUC RES/REA provisions require the use of merit staff. Determinations related to an EUC claimant's initial or continuing eligibility for benefits, as well as activities closely related to such determinations whether performed by UC or ES staff, are inherently governmental and must be made by merit staff. Therefore, activities such as notifying individuals of the new work search requirements, reviewing individuals' work search records to determine compliance with those requirements, referring such matters for adjudication, and detecting, reviewing, and referring any other eligibility issues for adjudication are all inherently governmental activities for which merit staffing is required. In addition, the EUC statute, under new section 4001(i)(3), requires, as a condition of continuing eligibility for EUC for any week, that an individual referred to RES or REAs participate in such services or activities,

> ...unless the State agency responsible for the administration of State unemployment compensation law determines that –

(A) such individual has completed participating in such services or activities; or

(B) there is justifiable cause for failure to participate or to complete participating in such services or activities, as determined in accordance with guidance to be issued by the Secretary."

The state-administered eligibility review providing the context for these determinations is required by section 4001(i)(2)(A)(iv). The state agency's overall process for determining eligibility is an inherently governmental function that must be performed by merit staff. Similarly, the determination about whether a waiver of participation is warranted under new section 4001(i)(3), a determination that directly impacts eligibility status, as well as closely related activities, must be made by state merit staff.

The new EUC program requires a number of RES/REA activities that are similar to one or more discrete activities states may already be performing for regular UC claimants and others. That is, a state may have services and procedures in place that the EUC statute now requires be extended or opened to certain EUC claimants. If a state chooses to provide labor exchange services related to reemployment or to reemployment and eligibility assessments – services that, based on Wagner-Peyser's universal access requirement could potentially be extended to those EUC claimants – through staff funded under Wagner-Peyser grants, those activities must be staffed with merit staffed employees. Consistent with longstanding practice, labor exchange services not performed by state merit staff cannot be charged to the Wagner-Peyser grant.

States are encouraged to use additional funding sources available for the delivery of RES/REA services. States may use EUC administrative funds to perform eligibility assessments. States may look to Wagner-Peyser and Workforce Investment Act funding to support delivery of core and intensive reemployment services. The $500 million distribution to states under the American Recovery and Reinvestment Act may be used for either REAs or RES services.

The Department's experience is that EUC claimants may face structural and skill-related challenges that are unique to the long-term unemployed. In carrying out these new EUC-related functions, service could be enhanced and prove more cost-effective if administered by a core team that has built-in experience with these issues. Accordingly, the Department encourages states to identify or dedicate certain staff (though this may not be exclusively what these staff do) to provide the key services to EUC claimants who apply or establish eligibility under this new program requirement. The Department recommends that the team be composed of UC and Wagner-Peyser staff (given the Wagner-Peyser staff's extensive experience in providing these necessary services). This may help provide greater consistency in the administration of services or issuance of determinations.

8. <u>Reporting RES/REA Activity</u>. Compliance with the Act will necessitate additional reporting by state agencies on the provision of RES/REA activities. The Department is in the process of submitting an Information Collection Request (ICR) to OMB requesting changes to existing collections and new collections. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the Paperwork Reduction Act of 1995, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB

control number (see 44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (see 44 U.S.C. 3512). The Department will notify states of OMB's decision upon review of the Department's ICR, including any changes that may result from this review process.

9. Action Requested. State Administrators are requested to provide this information to the appropriate staff.

10. Inquiries. Inquiries should be directed to the appropriate Regional Office.

11. Attachment. Middle Class Tax Relief and Job Creation Act of 2012 - Relevant Statutory Provisions

Middle Class Tax Relief and Job Creation Act of 2012

Relevant Statutory Provisions

TITLE II--UNEMPLOYMENT BENEFIT CONTINUATION AND PROGRAM IMPROVEMENT

SEC. 2001. SHORT TITLE.

This title may be cited as the `Extended Benefits, Reemployment, and Program Integrity Improvement Act'.

Subtitle C--Improving Reemployment Strategies Under the Emergency Unemployment Compensation Program

SEC. 2141. IMPROVED WORK SEARCH FOR THE LONG-TERM UNEMPLOYED.

(a) In General- Section 4001(b) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended--

(1) by striking `and' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting `; and'; and

(3) by adding at the end the following:

`(4) are able to work, available to work, and actively seeking work.'.

(b) Actively Seeking Work- Section 4001 of such Act is amended by adding at the end the following:

`(h) Actively Seeking Work-

`(1) IN GENERAL- For purposes of subsection (b)(4), the term `actively seeking work' means, with respect to any individual, that such individual--

`(A) is registered for employment services in such a manner and to such extent as prescribed by the State agency;

`(B) has engaged in an active search for employment that is appropriate in light of the employment available in the labor market, the individual's skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the State;

`(C) has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and

`(D) when requested, has provided such work search record to the State agency.

`(2) RANDOM AUDITING- The Secretary shall establish for each State a minimum number of claims for which work search records must be audited on a random basis in any given week.'.

SEC. 2142. REEMPLOYMENT SERVICES AND REEMPLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVITIES.

(a) Provision of Services and Activities- Section 4001 of such Act, as amended by section 2141(b), is further amended by adding at the end the following:

`(i) Provision of Services and Activities-

`(1) IN GENERAL- An agreement under this section shall require the following:

`(A) The State which is party to such agreement shall provide reemployment services and reemployment and eligibility assessment activities to each individual--

`(i) who, on or after the 30th day after the date of enactment of the Extended

Benefits, Reemployment, and Program Integrity Improvement Act, begins receiving amounts described in subsections (b) and (c); and

`(ii) while such individual continues to receive emergency unemployment compensation under this title.

`(B) As a condition of eligibility for emergency unemployment compensation for any week--

`(i) a claimant who has been duly referred to reemployment services shall participate in such services; and

`(ii) a claimant shall be actively seeking work (determined applying subsection (i)).

`(2) DESCRIPTION OF SERVICES AND ACTIVITIES- The reemployment services and in-person reemployment and eligibility assessment activities provided to individuals receiving emergency unemployment compensation described in paragraph (1)--

`(A) shall include--

`(i) the provision of labor market and career information;

`(ii) an assessment of the skills of the individual;

`(iii) orientation to the services available through the one-stop centers established under title I of the Workforce Investment Act of 1998; and

`(iv) review of the eligibility of the individual for emergency unemployment compensation relating to the job search activities of the individual; and

`(B) may include the provision of--

`(i) comprehensive and specialized assessments;

`(ii) individual and group career counseling;

`(iii) training services;

`(iv) additional reemployment services; and

`(v) job search counseling and the development or review of an individual reemployment plan that includes participation in job search activities and appropriate workshops.

`(3) PARTICIPATION REQUIREMENT- As a condition of continuing eligibility for emergency unemployment compensation for any week, an individual who has been referred to reemployment services or reemployment and eligibility assessment activities under this subsection shall participate in such services or activities, unless the State agency responsible for the administration of State unemployment compensation law determines that--

`(A) such individual has completed participating in such services or activities; or

`(B) there is justifiable cause for failure to participate or to complete participating in such services or activities, as determined in accordance with guidance to be issued by the Secretary.'.

(b) Issuance of Guidance- Not later than 30 days after the date of enactment of this Act, the Secretary shall issue guidance on the implementation of the reemployment services and reemployment and eligibility assessment activities required to be provided under the amendment made by subsection (a).

(c) Funding-

(1) IN GENERAL- Section 4004(c) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended--

(A) by striking `States- There' and inserting the following: `States-

`(1) ADMINISTRATION- There'; and

(B) by adding at the end the following new paragraph:

`(2) REEMPLOYMENT SERVICES AND REEMPLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVITIES-

`(A) APPROPRIATION- There are appropriated from the general fund of the Treasury, for the period of fiscal year 2012 through fiscal year 2013, out of the employment

security administration account (as established by section 901(a) of the Social Security Act), such sums as determined by the Secretary of Labor in accordance with subparagraph (B) to assist States in providing reemployment services and reemployment and eligibility assessment activities described in section 4001(h)(2).

`(B) DETERMINATION OF TOTAL AMOUNT- The amount referred to in subparagraph (A) is the amount the Secretary of Labor estimates is equal to--

`(i) the number of individuals who will receive reemployment services and reemployment eligibility and assessment activities described in section 4001(h)(2) in all States through the date specified in section 4007(b)(3); multiplied by

`(ii) $85.

`(C) DISTRIBUTION AMONG STATES- Of the amounts appropriated under subparagraph (A), the Secretary of Labor shall distribute amounts to each State, in accordance with section 4003(c), that the Secretary estimates is equal to--

`(i) the number of individuals who will receive reemployment services and reemployment and eligibility assessment activities described in section 4001(h)(2) in such State through the date specified in section 4007(b)(3); multiplied by

`(ii) $85.'.

(2) TRANSFER OF FUNDS- Section 4004(e) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended--

(A) in paragraph (1)(G), by striking `and' at the end;

(B) in paragraph (2), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following paragraph:

`(3) to the Employment Security Administration account (as established by section 901(a) of the Social Security Act) such sums as the Secretary of Labor determines to be necessary in accordance with subsection (c)(2) to assist States in providing reemployment services and reemployment eligibility and assessment activities described in section 4001(h)(2).'.

SEC. 2143. PROMOTING PROGRAM INTEGRITY THROUGH BETTER RECOVERY OF OVERPAYMENTS.

Section 4005(c)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended--

(1) by striking `may' and inserting `shall'; and

(2) by striking `except that' and all that follows through `made' and inserting `in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State'.