

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION
	Merit Staffing
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER
NO. 12-01, CHANGE 1

TO: STATE WORKFORCE AGENCIES

FROM: EMILY STOVER DeROCCO /s/
Assistant Secretary

SUBJECT: Outsourcing of Unemployment Compensation Administrative Functions –
Claims Taking.

1. Purpose. To provide additional guidance to the states regarding the Department of Labor's (Department's) interpretation of Federal law concerning the "outsourcing" of unemployment compensation (UC) claims taking functions.
2. References. Section 303(a)(1), Social Security Act (SSA); Office of Management and Budget (OMB) Circular No. A-76 (Revised), 68 Fed. Reg. 32,134 (May 29, 2003); OMB Office of Federal Procurement Policy (OFPP) Letter 92-1, 57 Fed. Reg. 45,096 (September 30, 1992); Unemployment Insurance Program Letter (UIPL) 12-01, dated December 28, 2000, 66 Fed. Reg. 1696 (January 9, 2001).
3. Background. UIPL 12-01 addressed the outsourcing (or contracting out) of functions related to the administration of state UC programs, based upon the merit staffing requirements of section 303(a)(1), SSA. As explained in that UIPL, "In determining what functions may be outsourced in State offices where Federal merit-staffing requirements apply, States are to rely on guidance in OMB Circular No. A-76 (Revised) . . ." Those OMB issuances do not permit the outsourcing of "inherently governmental functions," essentially those involving the exercise of discretion. On May 29, 2003, OMB issued a revision to Circular No. A-76. The Department reviewed UIPL 12-01 in light of the revised circular and determined that the revision does not affect the UIPL's guidance. However, in the course of this review and in light of changes in state claims processes, the Department identified limited, additional flexibility that can be afforded states regarding the outsourcing of UC claims taking.

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4. Claims taking. UIPL 12-01 stated that because the UC claims taking functions involved the exercise of discretion, they could be performed only by government employees. This position was based on the fact that “[c]laims taking involves providing claimants with an understanding of their rights to UC and with advice concerning when to file as well as what type of claim to file (e.g., intrastate, interstate, or combined-wage). Discretion must be exercised as to what advice is given.” The information and advice provided by the claims taker concerning UC could affect the claimant’s eligibility for benefits and the amount thereof.

Since 2001, some states have adopted telephone or internet based claims filing systems that accept information from the individual filing the claim and compile it in a database for further processing. Questions or issues that could potentially bear upon eligibility are referred to government employees who discuss the matter with the claimant. Government employees make all eligibility decisions.

The same principles of rote acceptance of information to complete a UC claim applicable to automated systems can be applied to claims taken by telephone directly by call center employees, or in-person claims taking, because rote acceptance does not involve the exercise of substantial discretion. In such cases, the claims taker merely receives information and refers all questions bearing upon eligibility to a government employee. The Department concludes that these rote activities may be outsourced because, unlike the claims taking contemplated in UIPL 12-01, the claims takers do not exercise substantial discretion in providing advice; instead, they merely accept information to be relayed to government employees who process claims.

The Department cautions that states must ensure that such outsourced claims takers’ duties remain limited to the rote acceptance of information so as to ensure only government employees answer questions, provide advice, or make decisions that could affect claimants’ eligibility.

5. Action. State administrators should distribute this advisory to appropriate staff.
6. Inquiries. Questions should be addressed to your Regional Office.