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| EMPLOYMENT AND TRAINING ADMINISTRATION<br>ADVISORY SYSTEM<br>U.S. DEPARTMENT OF LABOR<br>Washington, D.C. 20210 | <b>CLASSIFICATION</b><br>EUC             |
|   | <b>CORRESPONDENCE SYMBOL</b><br>OUI/DUIO |
|   | <b>DATE</b><br>September 20, 2012        |

**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 04-10, Change 10**

**TO:** STATE WORKFORCE AGENCIES

**FROM:** JANE OATES /s/  
Assistant Secretary

**SUBJECT:** Work Search Requirements for Emergency Unemployment Compensation (EUC) Recipients

1. **Purpose.** To advise state workforce agencies of the new provisions under the Middle Class Tax Relief and Job Creation Act of 2012 governing work search requirements for EUC recipients and state responsibilities for conducting random audits of recipients’ work search activities.

2. **References.**

- *Middle Class Tax Relief and Job Creation Act of 2012*, (Public Law (Pub. L.) 112-96), Title II, Sections 2001-2184 (Extended Benefits, Reemployment and Program Integrity Improvement Act (Act));
- *Supplemental Appropriations Act, 2008*, as amended, Pub. L. 110-252, Title IV, Sections 4001-4007 (EUC Act);
- Training and Employment Guidance Letter (TEGL) No. 20-11, *Reemployment Services and Reemployment and Eligibility Assessments for Recipients of Emergency Unemployment Compensation*;
- Unemployment Insurance Program Letter (UIPL) No. 23-08, *Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment Compensation*, and its Changes 1, 2, 3, 4, 5, and 6; and
- UIPL No. 04-10, *Extension of Temporary Provisions—Emergency Unemployment Compensation, 2008, Federal Additional Compensation, and Extended Benefits*, and its Changes 1, 2, 3, 4, 5, 6, 7, 8, and 9.

3. **Background.** Pub. L. 112-96 amended Section 4001(b) of the EUC Act by adding new Subsection (4) that 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;

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|----------------------------|--------------------------------------|
| <b>RESCISSIONS</b><br>None | <b>EXPIRATION DATE</b><br>Continuing |
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- 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 the work search record to the state agency.

Section 4001(h)(2) was added requiring the Secretary of Labor to establish a minimum number of claims for which work search records must be randomly selected for audit in any given week. States must conduct these random audits to ensure that claimants receiving EUC are meeting the state’s work search requirements. This UIPL provides guidance to states for these audits.

**4. Notification of Work Search Requirements.** UIPL No. 04-10, Change 9, and TEGL No. 20-11, which the Employment and Training Administration (ETA) issued recently on amendments to the EUC Act made by the Middle Class Tax Relief and Job Creation Act, advised states to immediately begin notifying EUC claimants that they must meet new EUC work search requirements. The UIPL advised states that they may make such notification by mail, Internet, or interactive voice response telephone systems.

#### Exceptions to the Work Search Requirements

- An EUC claimant participating in a state-approved training program may not be disqualified from receiving benefits for unavailability for, or not actively seeking, work or refusal to accept work (see Section 3304(a)(8), Federal Unemployment Tax Act).<sup>1</sup>
- Section 4001(h)(1)(A) requires state Employment Service registration “in such a manner and to such extent as prescribed by the state agency.” Therefore, if the agency under state law does not require registration for certain groups, such as union members who seek work through a hiring hall, these groups are excused from this requirement.
- Section 4001(h)(1)(B) requires an active search for work 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.” If state law permits or requires some workers to seek work through a hiring hall, that could impact the number of employer contacts that is appropriate for these claimants. Further, the state may determine that the appropriate number of contacts for an individual on a short term or seasonal layoff or with a letter of “intent to hire” from an employer is zero, since the individual is job attached.

#### Exception Related to Demonstration Projects

The active search for work requirement will not apply to individuals participating in a demonstration project authorized under section 305, SSA. Section 305(e) authorizes two types of activities that a demonstration project may include: subsidies for employer-provided training,

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<sup>1</sup> 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). . . .”

such as wage subsidies; and direct disbursements to employers who hire individuals receiving Unemployment Compensation (UC), including EUC.

With regard to the first activity, section 3304(a)(8), FUTA, provides that “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)[.]”

Since training approved under a demonstration project is approved training, the work search requirement will not apply to individuals while in that training.

With regard to the second activity, an individual will be ineligible for UC/EUC while employed by an employer participating in a demonstration project. Accordingly, the work search requirement will not apply to this individual while in that employment. States are not required to and should not modify their state laws or otherwise weaken work search requirements in order to participate in the demonstration project.

**5. Auditing Work Search Records.** Section 4001(h)(2) requires the U.S. Department of Labor (Department) to “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.” Attachment 1 to this UIPL includes procedures to help states select the sample of claims to be audited each week. The universe is the total number of paid EUC weeks, and the sample size is 0.5 percent of that universe. The procedures in Attachment 1 are designed so that the number of resulting samples will be between 50 and 1,500. Random audits are intended to be conducted for claims paid for a specific week of unemployment. States that use bi-weekly certifications for continued claims filing must ensure that each paid week is included in the pool of claims to be sampled.

- For those claims randomly selected, the audit of the EUC recipients’ work search must include a review of the claimants’ work search activities for the selected week to determine whether the claimants met the work search requirements for that week as prescribed by the state.
- To help claimants meet the new work search requirements, the state may develop a work search log that claimants can use to track their work search efforts, recording at a minimum, employers contacted, method of contact, and date contacted. The log may be returned by mail, e-mail, Internet, or by any cost effective means. There is no requirement that a work search audit for a claim record randomly selected under section 4001(h)(2) be conducted with the claimant present. However, if the only way to verify that the work search requirements were met is through an in person review, states must schedule the claimant for an in-person interview.

### Verification of Activities

In conducting random audits, states must attempt to verify at least one work search activity or contact listed by the claimant. A number of different methods may be used by states to verify work search activity. For example, if the claimant indicated that s/he sent a resume to an employer by e-mail, the state may verify that the resume was sent by requesting that the claimant

provide a snapshot of his/her “Sent Items” e-mail log. This will contain information such as the recipient, subject of the document, the date and time the document was received by the intended recipient, etc. Verification can also be made by the claimant providing documentation that shows the employer’s acknowledgement of the application and/or resume. In the states’ notifications to claimants, the state should advise claimants that they should retain copies of such e-mail exchanges and/or other electronic evidence as part of their work search records. Another verification method would be contacting the employer by phone, as appropriate. This is a traditional practice that states already use. Note: Verification with the state Employment Service alone that a claimant has registered as prescribed by the state does not satisfy this verification requirement since the claimant must also contact employers to meet the EUC work search requirement.

The statute makes these audits mandatory; it does not allow the Department to waive the requirement. Thus, for monitoring purposes, states must report the audit activities that correspond to the “weeks compensated” as reported on the EUC-specific ETA 5159 (Item 14). States must determine the acceptability of the work search documentation presented and whether the claimant met the requirements or was appropriately excused from the work search requirement. Any issues related to EUC work search requirements, such as when individuals do not provide documentation of their work search activities, must be referred for adjudication, as must any other issue uncovered during the audit. As noted above, the Department recognizes that states may, under their state law, waive the work search requirements for certain reasons, such as when individuals are attending approved training. Thus, when a claimant whose claim is selected for audit is in approved training, the state will review the individual’s approved training status to ensure such waiver was appropriate.

**6. Work Search Audit Administrative Funding.** State agencies should include requests for reimbursement for the administrative costs associated with the auditing of work search records on line 26 of the online ETA UI3 - Quarterly Financial Report (Regular). Thirty minutes are allowed for each audit. The calculation for determining such costs will follow the computation of above base earnings and should be documented in the comments section of the UI3. An example of this calculation is as follows: ((number of audits conducted x 30 minutes)/(standard quarterly hours paid x 60 minutes)) x experience leave factor x quarterly PS/PB rate x 1.19 = total reimbursement. Note: The standard quarterly hours paid, experience leave factor and quarterly PS/PB rate are reported on the UI3 under the section B heading, line 23 and line 24 respectively. The number of audits conducted for which reimbursement is requested must agree with the number of random audits conducted as reported on line 3 of the ETA 9162, Random Audit of EUC 2008 Claimants.

**7. Required Reporting.** The reporting requirements for the EUC program that were in place before these amendments have not changed. However, the new work search requirements and the requirement that states conduct random audits of claimants’ work search activities necessitate that states track and report these audit activities and the resulting outcomes.

Attachment 2 to this UIPL contains the instructions for completing the new Form ETA 9162, which states will use to report aggregate random audit activity and outcomes. This report was recently approved (OMB No. 1205-0495) and must be submitted, on a quarterly basis, through

the current electronic reporting system that states use to submit virtually all Unemployment Insurance required reports. The Department anticipates that this report will be available in the reporting system by mid-July, 2012, and that the first report, for activity during the second calendar quarter of 2012, will be due November 1, 2012. States with questions about the new Form ETA 9162 or Attachment 1 to this UIPL should contact the appropriate Regional Office.

**8. Interpretation.** The information in this document is issued to the states and cooperating state agencies as guidance provided by the Department in its role as the principal in the EUC program. As agents of the Federal government, the states and cooperating state agencies may not deviate from this guidance without the prior approval of the Department.

**9. Action Requested.** Administrators are to provide this guidance to the appropriate staff.

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

**11. Attachments.**

Attachment 1 - Sampling Procedures for EUC Claims Work Search Audits

Attachment 2 - Form ETA 9162 Random Audit of EUC 2008 Claimants

## Sampling Procedures for EUC Claims Work Search Audits

### EUC Payment File

1. Create a file of all EUC claims paid during the week beginning 12:01 am on Sunday and ending 11:59 pm on Saturday. The minimum data elements in the file are:
  - Claimant's Social Security Number (SSN);
  - Amount paid to the claimant (must be  $\geq$  \$1);
  - Week ending date of the week in which the agency issued the payment (not the week ending date of the week claimed). Format is MM/DD/YYYY; and
  - State may include additional data elements for control or identification (optional).
2. Sort the file created in step 1 by: a) amount paid (ascending), and b) the last four digits of the claimant's SSN (ascending).
3. Assign a case number from 1 to the total number of records in the sorted file (N).
4. The Department of Labor has developed a spreadsheet sampling tool. It can be downloaded from <http://ows.doleta.gov/unemploy/docs/wsaudit-06-25-2012.xls>. The spreadsheet is designed to be used in conjunction with the file created in steps 1 to 3. The file created in steps 1 to 3 is external to the spreadsheet; that is, the cases are not imported into the spreadsheet.
  - Enter the week ending date for the payment file created in steps 1 to 3 using the drop-down menu.
  - Enter the number of records in the file created in steps 1 to 3 in column B on the row "Enter Population." This will equal N (from step 3).
  - Enter the sample size between 50 and 1,500 cases. If the number of records in the file created in steps 1 to 3 is less than 50, audit all the records; if more than 1,500, audit a sample of 1,500.
5. The spreadsheet will retrieve the random number for the week ending date, calculate the skip interval, and display the case numbers of the EUC payments randomly selected.
6. Cases are selected using systematic selection.
  - A skip interval ( $i$ ) =  $N / n$  is calculated, where N is the number of records in the EUC payment file created in step 1 and n is the requested sample size.
  - The first case ( $n_1$ ) is selected by multiplying the skip interval ( $i$ ) by the random number ( $r$ ); the result is rounded to the nearest integer.
  - The next ( $n-1$ ) cases are selected by:  $[n_1 + (j \times i)]$ , where  $j = 1, 2 \dots (n-1)$ ; the results are rounded to the nearest integer.
7. Query the file created in steps 1 to 3 and select the records corresponding to the case numbers selected by the spreadsheet in step 5 (in the column labeled "Case Number"). These are the cases you will audit.

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| <b>ETA 9162 Random Audit of EUC 2008 Claimants</b> |
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**A. Facsimile of Form**

| STATE | REGION | REPORT FOR PERIOD ENDING  |
|-------|--------|---------------------------|
|       |        | calendar quarter end date |

**Section A: Claimants referred to Random Audit**

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| 1. Claimants Eligible for Random Audit                               | c1 |
| 2. Claimants Selected for Random Audit                               | c2 |
| 3. Random Audits Conducted   | c3 |
| 4. Claimants Who Failed to Report or Contact the Agency, as Directed | c4 |
| 5. Claimants Rescheduled for Random Audit                            | c5 |

**Section B: Random Audit Results**

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| 6. Claimants With No Issues Raised as Result of Random Audit                            | c6  |
| 7. Claimants Without Sufficient Work Search Documentation                               | c7  |
| 8. Claimants Disqualified Because Work Search Did Not Meet State or Federal Standards   | c8  |
| 9. Claimants Disqualified, or Determined Ineligible, For Failure to Report, As Directed | c9  |
| 10. Claimants Disqualified for Other Reasons  | c10 |

Comments:

**OMB No.:** 1205-0495      **OMB Expiration Date:** 11/30/2012      **Estimated Average Response Time:** 3 hours

**OMB Burden Statement:** These reporting instructions have been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a valid OMB control number. Public reporting burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submission is required to retain or obtain benefits under SSA 303(a)(6). Respondents have no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Workforce Security, Room S-4526, 200 Constitution Ave., NW, Washington, DC, 20210.

## B. Purpose

The ETA 9162 report is intended to provide a data describing random audits of the work search provision of Pub. L. 112-96. Random audits are conducted to ensure that claimants in the Emergency Unemployment Compensation Program of 2008 (EUC08) are performing an appropriate work search as required by state and Federal Law. States will audit, on a weekly basis, a cohort of EUC claimants of pre-defined size. Any EUC08 claimant that receives a week of payment is potentially subject to random audit of their work search documentation.

## C. Due Date and Transmittal

The electronically submitted report is due in the ETA National Office on the first day of the second month following the quarter of reference (e.g., August 1 for the April-June quarter). The first report, based on data for the second calendar quarter of 2012, is due in the National Office on August 1, 2012. Any activity that occurs in late March of 2012 should be included with the report for the April to June time period.

## D. General Reporting Instructions

States should use ETA guidance as a source of information on how to conduct the random audits. Report the general items specified in Section A of this report at the time they occur. Claimants identified for a random audit will receive an audit of their work search activities and records as required under state and Federal law. States will report summary data on the audits themselves, as well as any resulting disqualifications or denials from issues that were raised during the audit, in section B of the report.

Claimants eligible for Random Audit (Item 1) should tie very closely to the number of weeks paid for the reporting period that the state is reporting on their EUC-specific ETA 5159 report. Unless otherwise noted, all reporting elements should be a total count of occurrences during a reporting period, and not just a single occurrence for each individual claimant.

The state will conduct random audits on a pool of claimants of pre-defined size: 0.5 percent of all weeks paid in any Tier of the EUC program, with a minimum number of 50 and a maximum of number of 1,500, for any given week. There is no option for waivers in the random audit program so states should be reporting the appropriate number of audit activities relative to the weeks compensated being reported on the EUC-specific ETA 5159.

Because of operational issues such as backdating of claims and bi-weekly certification, and to minimize state burden, states should draw the pool for random audit from all weeks compensated, including individuals multiple times if they were paid multiple weeks. There is no need to produce a unique set of claimant identifiers for each individual week: states should draw their pool for random audits, for any given week, from all weekly certifications that they determined compensable in the prior week.

## E. Item by Item Instructions

1. Claimants Eligible for Random Audit: Report the number of checks issued to claimants in the EUC08 program during the reporting period. Use the same protocol for tabulating this number that is used in generating the weeks compensated for the EUC-specific ETA 5159 report.
2. Claimants Selected for Random Audit: Report the number of claimants from the pool described in item 1 that are selected to receive a random audit.
3. Random Audits Conducted: Report the number of claimants who were selected for a random audit and had a random audit conducted. Include claimants who were scheduled for a random audit in a prior reporting period but have their audit conducted in the current reporting period.

## ATTACHMENT 2

4. Claimants Who Failed to Report or Contact the Agency, as Directed: Report the number of claimants who were selected for a random audit and failed to report, irrespective of whether they were rescheduled or not.
5. Claimants Rescheduled for Random Audit: Report the number of claimants who were scheduled for a random audit, did not have the random audit conducted and now have a scheduled date for a random audit.
6. Claimants With No Issues Raised as Result of Random Audit: Report the number of random audits conducted which resulted in a finding that the claimant had met all state and Federal work search requirements and were not referred to adjudication on the basis of anything found during the random audit.
7. Claimants Without Sufficient Work Search Documentation: Report the number of random audits conducted which resulted in a finding that the claimant could not properly document their work search. Include cases where the claimant was referred to adjudication and cases where the claimant was not referred to adjudication.
8. Claimants Disqualified Because Work Search Did Not Meet State or Federal Standards: Report the number of claimants disqualified or determined ineligible for a week following a random audit that found the claimant's work search did not meet state or Federal requirements.
9. Claimants Disqualified, or Determined Ineligible, For Failure to Report, As Directed: Report the number of claimants disqualified or determined ineligible for a week following failure to participate in the random audit.
10. Claimants Disqualified for Other Reasons: Report the number of claimants disqualified or determined ineligible for a week following a random audit in which the claimant's work search did meet state or Federal requirements but other issues were raised that resulted in subsequent disqualification or denial of the paid week that was the basis of the random audit.