

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Compensation
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 02-12, Change 2

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Unemployment Compensation (UC) Program Integrity Provisions – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) – Combined Wage Claim (CWC) Program Questions and Answers

1. **Purpose.** To respond to questions from state workforce agencies and clarify states’ responsibilities related to the TAAEA amendments and their effect on the CWC program.
2. **References.**
 - TAAEA (Pub. L. 112-40) (19 U.S.C. 2101);
 - Section 303 of the Social Security Act (SSA) (42 U.S.C. 503);
 - Sections 3303 and 3304 of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3303, 3304);
 - 20 CFR, Part 616;
 - Unemployment Insurance Program Letter (UIPL) No. 02-12, *Unemployment Compensation (UC) Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)*;
 - UIPL No. 02-12, Change 1, *Unemployment Compensation (UC) Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)– Questions and Answers*; and
 - Training and Employment Notice No. 16-13, *New Unemployment Insurance Interstate Connection (UI-ICON) Web Applications Related to UI Integrity*.
3. **Background.** Section 3304(a)(9)(B), FUTA, requires states participating in the federal-state unemployment insurance (UI) program to participate in an interstate arrangement, which the Secretary of Labor (Secretary) has approved in consultation with state UI agencies, as reasonably calculated to assure prompt and full payment of benefits in cases where an unemployed worker has wages or employment in more than one state. U.S. Department of Labor (Department) regulations at 20 CFR, part 616, implementing this FUTA provision, established the interstate arrangement currently in place, commonly known as the “combined wage claim” or CWC program. Under this program, individuals in multi-state situations combine their employment and wages to establish a CWC benefit year under the law of a

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single state in order to qualify for benefits or increase weekly or maximum benefit amounts. The “paying state” is the state in which the individual elects to file the CWC and where the employment and wages will be combined for purposes of establishing monetary eligibility under that state law. An individual must have employment and wages in the paying state’s base period(s) in order to file a CWC in that state. A “transferring state” is a state(s) that transfers employment and wages to the paying state for use in establishing the CWC.

TAAEA Impact on the CWC Program

Section 3303(a), FUTA, governs the conditions under which a state may reduce employers’ rates of contribution to the state’s unemployment fund. As explained in UIPL No. 02-12, *Unemployment Compensation Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011*, many states relieve an employer’s unemployment account of charges (that is, the state will not charge the employer’s account for experience rating purposes) when the state has determined benefits were improperly paid.

Section 252(a), TAAEA, added a new provision to section 3303, FUTA. The new subsection of FUTA (f) provides that for a state’s law to meet the requirements of section 3303(a)(1), FUTA, – a condition necessary for the Secretary to certify the state’s law – the state must **not** relieve an employer of charges (i.e., must not allow non-charging of the employer’s account) when the employer or an agent of the employer:

- 1) was at fault for failing to respond timely or adequately to a request from the state agency for information relating to a UC claim and an overpayment resulted; and
- 2) the employer (or its agent) has established a pattern of failing to respond timely or adequately to requests from the state agency for information relating to UC claims.

This new provision prohibits states from providing relief from charges to an employer’s UI account when the actions of the employer or the agent of the employer have led to an improper payment(s). (See UIPL No. 02-12.) The new provision does not require charging under these circumstances; it only prohibits relief from charges if/when an employer has the potential to be charged under the state UI law. Determinations about a claimant’s eligibility for benefits may be separate from determinations about whether an employer’s account is charged for those benefits. Thus, the application of this provision depends on whether, in that state, a claimant is eligible (or would have been eligible in the case of a transferring state had the claim been filed in the transferring state) and whether the grounds for a determination of eligibility (such as the reason for separation) would normally result in a charge to an employer’s account. This new provision does not apply if state law would not otherwise permit or require a charge to an employer’s account for benefits paid to a claimant since in such case there are no charges from which an employer could be relieved. For example, an employer would not be charged when a transferring state relieves of charges (i.e., non-charges) the employer’s account if benefits would have been denied due to a monetary ineligibility had the claim been filed in the transferring state.

A CWC, by definition, always involves wages from two or more states and, therefore, from the perspective of the paying state will always involve both in-state and out-of-state employers. Therefore, the processing and payment of CWCs require additional communication between states, including communication about claimant eligibility and the grounds for charging or non-charging an employer's account. In cases where a paying state determines that a benefit overpayment resulted due to an out-of-state employer's failure to respond timely or adequately to the paying state's request for information, the paying state must promptly communicate its determination to the appropriate transferring state.

Each state has the responsibility to determine its own standard for what constitutes a "pattern" under these TAAEA provisions (i.e., the employer has established a pattern of failing to respond timely or adequately to requests from a state agency for information relating to a CWC). Thus, in cases where an overpayment is attributable to an employer covered by the law of the paying state, the paying state determines whether the employer or its agent has established a "pattern." On the other hand, if the overpayment is attributable to an employer covered by the law of a transferring state, the transferring state must act promptly and appropriately based on that transferring state's own definition or standard for a "pattern." (See questions and answers related to the respective responsibilities of the paying and transferring states in the attachment to this UIPL.)

4. **UIICON CWC Application.** The Department recognizes the need for states to have an efficient, secure, and expedient way of communicating with each other on these CWC issues. As a result, a new web-based application, called the CWC 02-12, was developed for states' use on the UI Interstate Connection (ICON) network. ICON is a secure telecommunications network through which states exchange UI claims-related data. The Department developed the UI-ICON CWC 02-12 application to ensure that a paying state is able to promptly communicate with a transferring state when the paying state determines an overpayment is the result of failure by an employer (from the transferring state) to respond timely and/or adequately to the paying state's request for information on a CWC.
5. **Action Requested.** State Administrators are requested to provide this guidance to appropriate staff.
6. **Inquiries.** Please direct questions to the appropriate Regional Office.
7. **Attachment.** Integrity Provisions – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) for Combined Wage Claims (CWC) Questions and Answers

Integrity Provisions – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) for Combined Wage Claims (CWC)

Questions and Answers

State Determinations

Question #1 - If an overpayment occurs on a CWC, which state is responsible for determining whether the chargeable employer is at fault for failing to respond timely or adequately to the paying state's request for information?

Answer. The paying state is responsible for the determination. Once the paying state's unemployment insurance (UI) agency requests necessary information from an employer or its agent in processing a CWC filed in the state, only the "paying state" can determine whether the employer or its agent is at fault for failing to respond timely or adequately to the request. In this case, the paying state is making a determination about timeliness or adequacy with respect to the employer's actions and not ruling on the matter of the broader pattern of behavior. The paying state must promptly issue a determination to the employer and, as appropriate, advise the transferring state of that determination. It is strongly recommended that states use the Unemployment Insurance (UI) Interstate Connection (ICON) CWC 02-12 application.

Question #2 - Which state is responsible for determining whether the employer has established a pattern of failing to respond timely or adequately to requests from a state agency for information relating to a CWC?

Answer. It depends. If the chargeable employer is a covered employer in the paying state (i.e., an "in-state" employer), the paying state will determine whether the employer has met the paying state's standard for a pattern and issue a determination to the employer.

If the chargeable employer is a covered employer in the transferring state (i.e., an "out-of-state" employer, from the perspective of the paying state), the transferring state will determine whether the employer has met the transferring state's standard for a pattern and will issue a determination to the employer following its own law concerning notification of charges to an employer.

A state, under its law or written policy, may elect to combine occurrences of an employer's failure to respond timely or adequately from one or more states to determine whether the employer or its agent has developed a "pattern."

Question #3 – Does TAAEA require paying states to use the UI-ICON CWC 02-12 application to notify other states of determinations about a CWC that triggers the new employer charging provisions?

Answer. States are not required to use the UI-ICON CWC 02-12 application. However, paying states do have an obligation to notify the transferring state promptly when the paying state

determines that an employer from the transferring state is at fault for a CWC overpayment, based on the employer's failure to respond timely or adequately to the paying state's request for information. The paying state is also required to notify the transferring state of any appeals and appeal decisions related to the initial determination. Based on state input, the UI-ICON CWC 02-12 application was developed to facilitate the necessary communications between paying states and transferring states with regard to the TAAEA provisions. Thus, we strongly recommend that states use the UI-ICON CWC 02-12 application for this purpose.

Employer Appeals

Question #4 - If the chargeable employer appeals the paying state's determination that the employer has failed to respond timely or adequately to the state's request for information, which state has the responsibility of hearing the appeal?

Answer. The paying state is responsible for hearing an employer's appeal from its determination that the employer failed to respond timely or adequately to a request for information. The paying state will hear the appeal of its determination whether the employer is an in-state or an out-of-state employer. The paying state must promptly communicate the disposition of the appeal to the transferring state, as appropriate. We strongly recommend that this be done through the UI-ICON CWC 02-12 application to help ensure that the employer's account is charged or relieved of charges ("non-charged"), as appropriate, in the transferring state.

Question #5 - Which state hears an employer's appeal from a determination that the employer or its agent has established a pattern of failing to respond timely or adequately to request from a state agency for information relating to a CWC?

Answer. It depends. If the chargeable employer is a covered employer in the paying state, the paying state determines whether the employer met its standard for a "pattern" and will be responsible for hearing the appeal. If the chargeable employer is covered under the law of the transferring state, the transferring state determines whether the employer met its standard for a pattern and will be responsible for hearing the appeal.