

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL OUI/DL
	DATE February 11, 2013

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 15-12, Change 2

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Unemployment Insurance Demonstration Projects under Section 305 of the Social Security Act

1. Purpose. To clarify the applicability of the able and available and work search requirements under section 303(a)(12) of the Social Security Act (SSA) to participants in demonstration projects permitted under section 305, SSA.

2. References.

- Middle Class Tax Relief and Job Creation Act of 2012 (the Act; Pub. L. 112-96);
- Sections 3304 and 3306 of the Federal Unemployment Tax Act (FUTA);
- Sections 303 and 305, SSA;
- 20 CFR Part 604; and
- Unemployment Insurance Program Letter (UIPL) No. 15-12 and Change 1;

3. Background. Section 2101 of the Act amended Title III, SSA, to add a new section 303(a)(12), which provides that state law must require an applicant for unemployment compensation (UC), as a condition of eligibility, to be able to work, available for work, and actively seeking work. Section 2102 of the Act enacted a new section 305, SSA, which provides the Secretary of Labor (Secretary) authority to permit states to conduct demonstration projects under certain circumstances.

We anticipate that most participants in demonstration projects will no longer be UC claimants, and that the eligibility requirements in section 303(a)(12), SSA, will not, therefore, apply to them. However, there are certain types of demonstration projects where participants may continue to receive UC while they are participating in the demonstration project.

Under Federal law, states may not deny UC to an individual who is in training with the approval of the state agency based on state law requirements relating to availability for work, active search for work, or refusal to accept work. See section 3304(a)(8), FUTA. In addition, some states continue to pay UC to individuals who were able to work and available

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for work when the initial claim was filed, but who are ill or injured, so long as they did not receive an offer of suitable work during the week in which they were unable to, or unavailable for, work. See 20 CFR Part 604. For extended benefits, states may also waive work search requirements when the individual is on jury duty or in the hospital due to an emergency or a life-threatening condition. See section 3304, FUTA, note, 202(a)(1)(3)(A)(ii).

4. Applicability of job search requirements to participants in approved demonstration projects. Reforms to Federal UC law in the Act treat certain hybrid work/UC arrangements as satisfying the “actively seeking work” requirement. For example, the requirement is fulfilled for UC by participation in state approved training, and for Short-Time Compensation by the workers “being available for their workweek as required by the State [UC] agency.” See sections 3304(a)(8) and 3306(v)(5), FUTA.

With regard to individuals participating in a demonstration project authorized under section 305, participants in demonstration projects who are in training meet the work search requirement by virtue of such training and the work search requirement does not apply to participants who are employed. Thus, 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. Section 305(e), SSA, authorizes two types of activities that a demonstration project may include: subsidies for employer-provided training, such as wage subsidies, and direct disbursements to employers who hire individuals receiving UC. 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 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.

5. Action Requested. State administrators should distribute this advisory to appropriate staff.

6. Inquiries. Questions should be addressed to your Regional Office.