

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	<b>CLASSIFICATION</b> UI - STC
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**ADVISORY:** UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 03-13

**TO:** STATE WORKFORCE AGENCIES

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

**SUBJECT:** Financing of Temporary Federal Short-Time Compensation Programs under Section 2163 of the Middle Class Tax Relief and Job Creation Act of 2012

1. **Purpose.** To invite states to enter into an Agreement with the Secretary of Labor (Secretary) to administer a temporary Federal Short-Time Compensation (STC) program under the Middle Class Tax Relief and Job Creation Act of 2012 (Act) and provide states with instructions for implementing and operating the program, including fiscal and reporting instructions.

2. **References.**

- Title II of the Middle Class Tax Relief and Job Creation Act of 2012 (Act), (Public Law (Pub. L.) 112-96), the Layoff Prevention Act of 2012 (Subtitle D of title II of the Act, sections 2160 – 2166);
- Section 401 of the Unemployment Compensation Amendments of 1992, (Pub. L.102-318);
- Section 194 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Pub. L. 97-248);
- Section 3303(a)(1) of the Federal Unemployment Tax Act (FUTA);
- Sections 3304(a)(4)(E) and (6)(B) of FUTA;
- Section 3306(f)(5) of FUTA;
- Section 3309(a)(2) of FUTA;
- Section 303(a)(5) of the Social Security Act (SSA);
- Sections 414(i) and (j) of the Internal Revenue Code (IRC);
- Workforce Investment Act (WIA) Final Rule;
- 20 Code of Federal Regulations (CFR) parts 665.300(a)-665.330, *Subpart C—Rapid Response Activities*;
- 29 CFR part 97.42, *Retention and access requirements for records*;
- Unemployment Insurance Program Letter (UIPL) No. 22-12, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*;
- UIPL No. 12-01, *Outsourcing of Unemployment Compensation Administrative Functions*, and UIPL No. 12-01, Change 1;

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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- UIPL No. 45-92, *Unemployment Compensation Amendments of 1992 (Pub. L. 102-318) – Provisions Affecting the Federal-State Unemployment Compensation (UC) Program*; and
- Training and Employment Guidance Letter (TEGL) No. 30-09, *Layoff Aversion Definition and the Appropriate Use of Workforce Investment Act Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver*.

3. **Background.** STC programs, also known as work-sharing or shared work programs, are designed to preserve employees’ jobs and help employers retain their skilled workforce during times of lowered economic activity in the business cycle of an employer. STC programs help employers avert temporary or permanent layoffs through the reduction of work hours for a whole group of employees rather than lay off some while others continue working full time.

Section 194 of TEFRA authorized states to implement temporary STC programs using funds from their accounts in the Unemployment Trust Fund (UTF). Section 401 of Pub. L. 102-318 added permanent statutory authority for states to fund STC programs from their UTF accounts and established certain requirements in defining STC. Under the Act, the definition of STC is modified from that in Pub. L. 102-318. The term “short-time compensation” is defined in new subsection (v) of Section 3306, FUTA. See UIPL No. 22-12, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012* for the full STC definition. States are not required to enact an STC program into law; however, states may not operate an STC program that does not conform to the STC definition in Section 3306(v) of FUTA, except temporarily, as provided under Section 2160(a)(3) of the Act.

Employer participation in an STC program is voluntary. An employer must submit a written plan to the state UC agency, which is subject to the state’s approval. The employer’s plan must be consistent with employer obligations under applicable Federal and state laws. Further, the affected employees’ (also known as “affected unit”) workweeks must have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the state, but in no case more than 60 percent. STC employees are considered to be job attached and will meet the UC availability for work and work search test requirements (while collecting STC) by being available for the workweek as required by the state agency. Further, the STC plan must provide that employers will maintain (to the same extent as other employees not participating in the STC program) health benefits and retirement benefits under Sections 414 (i) and (j) of the IRC for employees in the affected unit, despite the reduced hours; and the plan may provide that workers in the affected unit may participate in employer sponsored or WIA-funded training if approved by the UC agency.

Section 2162 of the Act provides for Federal reimbursement of state STC benefit costs. Reimbursement is available for up to 156 weeks to states whose STC laws conform to the definition in Section 3306(v), FUTA. Such states would, generally, not participate in the temporary Federal STC program described in section 4 below.

4. **Temporary Federal STC.** If a state law does not presently provide for the payment of STC, Section 2163 of the Act permits states to enter into an agreement with the Secretary to implement a temporary Federal STC program. Federal STC is an opportunity for states to operate an STC program temporarily and determine the feasibility of full-scale

implementation. States may administer the temporary Federal STC program starting from the date the agreement is executed through May 24, 2014. Federal STC programs are administered by the states acting as agents of the Secretary. Payments of the temporary Federal STC must be paid in accordance with Section 3306(v), FUTA. Further, states that choose to operate a Federal STC program must do so in accordance with the U.S. Department of Labor's (Department) guidance and abide by the required agreements (see Attachments III and IV).

Under the Federal STC agreement, the state will receive Federal financing of one-half (50 percent) of the benefit costs of STC and the STC employer must pay one-half of the benefit costs. Amounts collected from employers under this provision must be deposited into the state's unemployment fund and may not be used for calculating the employer's contribution rate. Section 2163(b)(3) of the Act requires employers to reimburse the state for one-half of the Federal STC costs, and provides that these reimbursements will be deposited in the state's unemployment trust fund. (Under the "immediate deposit" standard of section 3304(a)(3), FUTA, and section 303(a)(4), SSA, the state must immediately transfer these reimbursements in its unemployment fund to its account in the Federal UTF). The section further provides that the reimbursements must not be used for purposes of calculating an employer's contribution rate under section 3303(a)(1), FUTA. This means that the reimbursements may not be credited to the employers' reserve or applied as a voluntary contribution.

In addition to reimbursing the state for one-half of the benefit costs of Federal STC, the Federal government will provide funds for administrative expenses associated with operating a Federal STC program. Administrative funds will be provided under an Addendum to the Unemployment Insurance (UI) Program Annual Funding Agreement. The state must submit a request/proposal through the Supplemental Budget Request (SBR) grant process to receive administrative funds for the costs associated with a Federal STC program, including implementation and outreach activities. The SBR grant process for this administrative funding is further explained below.

#### Payments to States: 50 Percent Federal Funding for Federal STC payments

As noted above, the Federal government will reimburse states for 50 percent of the benefit costs of a Federal STC program. Reimbursement of STC benefit costs may not exceed 104 weeks or extend past May 24, 2014. No reimbursement will be made to states for Federal STC paid to any individual in excess of 26 times the amount of regular UC (including dependents' allowances) as well as Federal STC paid to any individual(s) employed by an STC employer on a seasonal, temporary, or intermittent basis. The 50 percent reimbursement payment process works as follows:

- Payments made to a state will be payable by way of reimbursement in the amounts the Secretary estimates the state will be entitled to receive for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the estimates for any prior calendar month were greater or less than the amounts which should have been paid to the state.

- Reimbursement for benefits will be provided to each eligible state through the UI Program Annual Funding Agreement, after the state executes an Addendum to the Agreement to allow for the funding (see Attachment IV). The Grant Officer will assign a separate line on the UI program notices allowing for an issuance of obligational authority for STC benefit funds, and a separate sub-account for STC benefits will be set up in the Payment Management System (PMS) for states to draw down STC benefit funds. This will function identically to the benefit funding for Trade Readjustment Allowances and wage insurance benefits that are also covered by the UI Program Annual Funding Agreement.

States that enact legislation that conforms to Section 3306(v), FUTA, will receive an extra 52 weeks of 100 percent Federal reimbursement of STC benefit costs and they may also apply for an STC grant to implement/improve administration of the STC program and for STC promotion and enrollment. States that have laws that conform to the new requirements are eligible for 100 percent reimbursement of benefit costs until August 22, 2015; however, they must apply for the STC grant(s) on or before December 31, 2014.

If a state operates a Federal STC program and later enacts a law providing for the payment of STC under a state STC program that meets the definition of Section 3306(v), FUTA, the state:

- Will be eligible to receive reimbursement for STC costs after the effective date of its new STC law as provided in Section 2162 of the Act; and,
- Must sign an agreement so the state can receive the maximum combined reimbursement not to exceed a total of 156 weeks.

#### Federal STC Administrative Expenses

As stated above, reimbursement of Federal STC program administrative costs will be provided to each eligible state under the UI Program Annual Funding Agreement. Like the process for reimbursement of Federal STC benefits, the Grant Officer will assign a separate line on the UI program notices allowing for issuance of obligational authority for STC administrative funds, and a separate sub-account for STC administration will be set up in the PMS for states to draw down funds to pay administrative costs. Reimbursement will be provided for both implementation costs as well as ongoing administrative costs.

- The reimbursement for implementation costs of Federal STC will be made available through the SBR grant process. To receive SBR funding, states will need to submit an SBR detailing one-time costs attributable to the implementation of Federal STC.
- Ongoing STC administrative costs will be paid for through the ETA UI-3 Quarterly Financial Report (Office of Management and Budget (OMB) No. 1205-0132), also referred to as the “above-base” funding process, based on the workload levels reported on the STC-related report (the ETA 5159, *Claims and Payment Activities (Workshare)* report (OMB No. 1205-0010)). These workloads will be funded at the same rates that apply to regular UI above-base workloads.

In submitting SBRs, the Department recommends that states consider how a Federal STC program can be used as a tool for outreach activities as part of the state plan to avert layoffs. See TEGP No. 30-09 for guidance on layoff aversion strategies and a definition of layoff

aversion. As noted in that TEGL, “ETA considers a layoff averted when: 1) a worker’s job is saved with an existing employer that is at risk of downsizing or closing; or 2) a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no or a minimal spell of unemployment.” States should develop a coordinated strategy to avert layoffs using STC as a layoff aversion tool and consult with the appropriate partners before implementing a Federal STC program. In addition to the UI program, partners may include, but are not limited to:

- Workforce system partners: Rapid Response teams, American Job Centers (also known as One-Stop Career Centers), and Business Service representatives;
- The employer/business community including, but not limited to, chambers of commerce, small business organizations, manufacturers associations, human resource organizations, and employer third-party administrators;
- Labor organizations; and
- State partner agencies, including economic development agencies.

#### Federal STC Program: Benefits and Administrative Funds - Fiscal Reporting

Because of the separate appropriation for Federal STC program benefits and administrative funds, states must track and report STC benefit and administrative obligational authority and expenditures separately. Therefore, for a Federal STC Program, states must establish a separate fund ledger and must submit a separate ETA 9130, Federal Financial Report (OMB No. 1205-0461) for each type of expenditure.

5. **Staffing Guidelines.** Federal laws and regulations governing UC require that services be administered by “government” personnel. A state’s receipt of the UC administrative grant requires that the state law provide 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 state activities supporting the administration of the UC program that are inherently governmental functions must be merit-staffed. See UIPL No. 12-01 and its Change 1. Accordingly, under section 303(a)(1), SSA, states must use merit staff to administer the inherently governmental functions of their state STC programs. Further, section 2163 of the Act allows a state without a state STC program to operate a Federal STC program in accordance with the definition under section 3306(v), FUTA, on a temporary basis through an agreement with the Department. To ensure that states adopting the temporary Federal STC program as a first step to adopting a permanent state STC program are able to make the transition to a state STC program that complies with section 3306(v), FUTA, states are strongly encouraged to use merit staff to administer the inherently governmental functions of their temporary Federal STC programs.
6. **Required Reporting.** States that operate Federal STC programs must submit program data under existing state STC reporting requirements. Instructions for all STC required reports can be found in ET Handbook No. 401, including specific line-by-line reporting instructions for the reports listed below. State reporting for STC includes the following:

- Monthly reporting of claims and payment activities on the work-share specific form, ETA 5159, *Claims and Payment Activities* (OMB No.1205-0010).
- Weekly reporting of initial and continuing claims, as well as equivalents, on the form ETA 539, *Advance Weekly Initial and Continued Claims* (OMB No. 1205-0028).
- Monthly reporting of time lapse for first payments on the work-share specific form, ETA 9050, *First Payment Time Lapse* (OMB No. 1205-0359).
- Monthly reporting of time lapse for continued weeks on the work-share specific form, ETA 9051, *Continued Weeks Compensated Time Lapse* (OMB No. 1205-0359).

In addition, Section 2163 of the Act requires additional reporting beyond those mentioned above. These additional reporting requirements are detailed in the “Reporting Instructions” section of Attachment II to this UIPL. This UIPL and its attachments were submitted to OMB for Paperwork Reduction Act approval and were approved by OMB (OMB Number 1205-0499, expires December 31, 2012) on June 14, 2012. The Employment and Training Administration (ETA) is currently in the process of renewing this collection, and extending its authorization to collect data related to the Federal STC program through 2015.

7. **Agreements.** As previously mentioned, states will act as agents of the Secretary in administering a Federal STC program and must agree to operate the program in accordance with this guidance and the attached operating instructions. Interested states should contact the appropriate Regional Office to request a Federal STC Agreement, which will be signed by the Secretary (see Attachment III) and to request the Addendum to the Fiscal Year 2012 UI Program Annual Funding Agreement (see Attachment IV). The Federal STC Agreement will be executed once the state Administrator signs and returns it to the Department. The Secretary reserves the right to terminate the agreement(s) if the terms of the agreement(s) are not met.
8. **Technical Assistance.** Section 2164 of the Act authorizes the Secretary “to use 0.25 percent of funds available under subsection (g) to provide for outreach and to share best practices with respect to this section and STC programs.” Accordingly, the Department is developing a technical assistance strategy that will include webinars, additional guidance, and the collection of noted practices to help states implement STC programs.

A webinar about Federal STC and related reporting requirements will be conducted upon release of this guidance. Other technical assistance will include an STC toolkit that will be posted on the UI Community of Practice Web site at <http://ui.workforce3one.org>.

9. **Action Requested.** State Administrators are requested to distribute this advisory to appropriate staff.
10. **Inquiries.** Questions should be addressed to the appropriate Regional Office.
11. **Attachments.**

Attachment I	Subtitle D—Short-Time Compensation Program (STC)
Attachment II	Operating Instructions for Federal Short-Time Compensation (STC)
Attachment III	Federal-state Agreement (Draft)

Attachment IV Unemployment Insurance (UI) Program FY 2012 Annual Funding Agreement Addendum (Draft)

**Subtitle D—Short-Time Compensation  
Program (STC)**

SEC. 2160. SHORT TITLE.

This subtitle may be cited as the 'Layoff Prevention Act of 2012'.

SEC. 2161. TREATMENT OF SHORT-TIME COMPENSATION PROGRAMS.

(a) Definition-

(1) IN GENERAL- Section 3306 of the Internal Revenue Code of 1986 (26 U.S.C. 3306) is amended by adding at the end the following new subsection:

'(v) Short-Time Compensation Program- For purposes of this part, the term 'short-time compensation program' means a program under which--

- '(1) the participation of an employer is voluntary;
- '(2) an employer reduces the number of hours worked by employees in lieu of layoffs;
- '(3) such employees whose workweeks have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the State to be appropriate (but in no case more than 60 percent), are not disqualified from unemployment compensation;
- '(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would otherwise be payable to the employee if such employee were unemployed;
- '(5) such employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency;
- '(6) eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Investment Act of 1998) to enhance job skills if such program has been approved by the State agency;
- '(7) the State agency shall require employers to certify that if the employer provides health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) or contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program;
- '(8) the State agency shall require an employer to submit a written plan describing the manner in which the requirements of this subsection will be implemented (including a plan for giving advance notice, where feasible, to an employee whose workweek is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation and such other information as the Secretary of Labor determines is appropriate;
- '(9) the terms of the employer's written plan and implementation shall be consistent with employer obligations under applicable Federal and State laws; and
- '(10) upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program.'

(2) EFFECTIVE DATE- Subject to paragraph (3), the amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(3) TRANSITION PERIOD FOR EXISTING PROGRAMS- In the case of a State that is administering a short-time compensation program as of the date of the enactment of this Act and the State law cannot be administered consistent with the amendment made by paragraph (1), such amendment shall take effect on the earlier of--

- (A) the date the State changes its State law in order to be consistent with such amendment; or
- (B) the date that is 2 years and 6 months after the date of the enactment of this Act.

(b) Conforming Amendments-

(1) INTERNAL REVENUE CODE OF 1986-

- (A) Subparagraph (E) of section 3304(a)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

(E) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined under section 3306(v));'

(B) Subsection (f) of section 3306 of the Internal Revenue Code of 1986 is amended--

(i) by striking paragraph (5) (relating to short-time compensation) and inserting the following new paragraph:

(5) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined in subsection (v)); and'; and

(ii) by redesignating paragraph (5) (relating to self-employment assistance program) as paragraph (6).

(2) SOCIAL SECURITY ACT- Section 303(a)(5) of the Social Security Act is amended by striking 'the payment of short-time compensation under a plan approved by the Secretary of Labor' and inserting 'the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986)'.

(3) UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1992- Subsections (b) through (d) of section 401 of the Unemployment Compensation Amendments of 1992 (26 U.S.C. 3304 note) are repealed.

## SEC. 2162. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION PAYMENTS IN STATES WITH PROGRAMS IN LAW.

### (a) Payments to States-

(1) IN GENERAL- Subject to paragraph (3), there shall be paid to a State an amount equal to 100 percent of the amount of short-time compensation paid under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)) under the provisions of the State law.

(2) TERMS OF PAYMENTS- Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

### (3) LIMITATIONS ON PAYMENTS-

(A) GENERAL PAYMENT LIMITATIONS- No payments shall be made to a State under this section for short-time compensation paid to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.

(B) EMPLOYER LIMITATIONS- No payments shall be made to a State under this section for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

### (b) Applicability-

(1) IN GENERAL- Payments to a State under subsection (a) shall be available for weeks of unemployment--

(A) beginning on or after the date of the enactment of this Act; and

(B) ending on or before the date that is 3 years and 6 months after the date of the enactment of this Act.

(2) THREE-YEAR FUNDING LIMITATION FOR COMBINED PAYMENTS UNDER THIS SECTION AND SECTION 2163- States may receive payments under this section and section 2163 with respect to a total of not more than 156 weeks.

(c) Two-Year Transition Period for Existing Programs- During any period that the transition provision under section 2161(a)(3) is applicable to a State with respect to a short-time compensation program, such State shall be eligible for payments under this section. Subject to paragraphs (1)(B) and (2) of subsection (b), if at any point after the date of the enactment of this Act the State enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State shall be eligible for payments under this section after the effective date of such enactment.

### (d) Funding and Certifications-

(1) FUNDING- There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(2) CERTIFICATIONS- The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(e) Definitions- In this section:

(1) SECRETARY- The term 'Secretary' means the Secretary of Labor.

(2) STATE; STATE AGENCY; STATE LAW- The terms 'State', 'State agency', and 'State law' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

#### SEC. 2163. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION AGREEMENTS.

(a) Federal-State Agreements-

(1) IN GENERAL- Any State which desires to do so may enter into, and participate in, an agreement under this section with the Secretary provided that such State's law does not provide for the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)).

(2) ABILITY TO TERMINATE- Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) Provisions of Federal-State Agreement-

(1) IN GENERAL- Any agreement under this section shall provide that the State agency of the State will make payments of short-time compensation under a plan approved by the State. Such plan shall provide that payments are made in accordance with the requirements under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

(2) LIMITATIONS ON PLANS-

(A) GENERAL PAYMENT LIMITATIONS- A short-time compensation plan approved by a State shall not permit the payment of short-time compensation to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.

(B) EMPLOYER LIMITATIONS- A short-time compensation plan approved by a State shall not provide payments to an individual if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

(3) EMPLOYER PAYMENT OF COSTS- Any short-time compensation plan entered into by an employer must provide that the employer will pay the State an amount equal to one-half of the amount of short-time compensation paid under such plan. Such amount shall be deposited in the State's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate under section 3303(a)(1) of the Internal Revenue Code of 1986.

(c) Payments to States-

(1) IN GENERAL- There shall be paid to each State with an agreement under this section an amount equal to--

(A) one-half of the amount of short-time compensation paid to individuals by the State pursuant to such agreement; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(2) TERMS OF PAYMENTS- Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(3) FUNDING- There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(4) CERTIFICATIONS- The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(d) Applicability-

(1) IN GENERAL- An agreement entered into under this section shall apply to weeks of unemployment--

(A) beginning on or after the date on which such agreement is entered into; and

(B) ending on or before the date that is 2 years and 13 weeks after the date of the enactment of this Act.

(2) TWO-YEAR FUNDING LIMITATION- States may receive payments under this section with respect to a total of not more than 104 weeks.

(e) Special Rule- If a State has entered into an agreement under this section and subsequently enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State--

(1) shall not be eligible for payments under this section for weeks of unemployment beginning after the effective date of such State law; and

(2) subject to paragraphs (1)(B) and (2) of section 2162(b), shall be eligible to receive payments under section 2162 after the effective date of such State law.

(f) Definitions- In this section:

(1) SECRETARY- The term `Secretary' means the Secretary of Labor.

(2) STATE; STATE AGENCY; STATE LAW- The terms `State', `State agency', and `State law' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

#### SEC. 2164. GRANTS FOR SHORT-TIME COMPENSATION PROGRAMS.

(a) Grants-

(1) FOR IMPLEMENTATION OR IMPROVED ADMINISTRATION- The Secretary shall award grants to States that enact short-time compensation programs (as defined in subsection (i)(2)) for the purpose of implementation or improved administration of such programs.

(2) FOR PROMOTION AND ENROLLMENT- The Secretary shall award grants to States that are eligible and submit plans for a grant under paragraph (1) for such States to promote and enroll employers in short-time compensation programs (as so defined).

(3) ELIGIBILITY-

(A) IN GENERAL- The Secretary shall determine eligibility criteria for the grants under paragraphs (1) and (2).

(B) CLARIFICATION- A State administering a short-time compensation program, including a program being administered by a State that is participating in the transition under the provisions of sections 301(a)(3) and 302(c), that does not meet the definition of a short-time compensation program under section 3306(v) of the Internal Revenue Code of 1986 (as added by 211(a)), and a State with an agreement under section 2163, shall not be eligible to receive a grant under this section until such time as the State law of the State provides for payments under a short-time compensation program that meets such definition and such law.

(b) Amount of Grants-

(1) IN GENERAL- The maximum amount available for making grants to a State under paragraphs (1) and (2) shall be equal to the amount obtained by multiplying \$100,000,000 (less the amount used by the Secretary under subsection (e)) by the same ratio as would apply under subsection (a)(2)(B) of section 903 of the Social Security Act (42 U.S.C. 1103) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1) of such section) that would have been subject to transfer to State accounts, as of October 1, 2010, under the provisions of subsection (a) of such section.

(2) AMOUNT AVAILABLE FOR DIFFERENT GRANTS- Of the maximum incentive payment determined under paragraph (1) with respect to a State--

(A) one-third shall be available for a grant under subsection (a)(1); and

(B) two-thirds shall be available for a grant under subsection (a)(2).

(c) Grant Application and Disbursal-

(1) APPLICATION- Any State seeking a grant under paragraph (1) or (2) of subsection (a) shall submit an application to the Secretary at such time, in such manner, and complete with such information as the Secretary may require. In no case may the Secretary award a grant under this section with respect to an application that is submitted after December 31, 2014.

(2) NOTICE- The Secretary shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary's findings with respect to the requirements for a grant under paragraph (1) or (2) (or both) of subsection (a).

(3) CERTIFICATION- If the Secretary finds that the State law provisions meet the requirements for a grant under subsection (a), the Secretary shall thereupon make a certification to that effect

to the Secretary of the Treasury, together with a certification as to the amount of the grant payment to be transferred to the State account in the Unemployment Trust Fund (as established in section 904(a) of the Social Security Act (42 U.S.C. 1104(a))) pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer to the State account within 7 days after receiving such certification.

(4) REQUIREMENT- No certification of compliance with the requirements for a grant under paragraph (1) or (2) of subsection (a) may be made with respect to any State whose--

(A) State law is not otherwise eligible for certification under section 303 of the Social Security Act (42 U.S.C. 503) or approvable under section 3304 of the Internal Revenue Code of 1986; or

(B) short-time compensation program is subject to discontinuation or is not scheduled to take effect within 12 months of the certification.

(d) Use of Funds- The amount of any grant awarded under this section shall be used for the implementation of short-time compensation programs and the overall administration of such programs and the promotion and enrollment efforts associated with such programs, such as through--

(1) the creation or support of rapid response teams to advise employers about alternatives to layoffs;

(2) the provision of education or assistance to employers to enable them to assess the feasibility of participating in short-time compensation programs; and

(3) the development or enhancement of systems to automate--

(A) the submission and approval of plans; and

(B) the filing and approval of new and ongoing short-time compensation claims.

(e) Administration- The Secretary is authorized to use 0.25 percent of the funds available under subsection (g) to provide for outreach and to share best practices with respect to this section and short-time compensation programs.

(f) Recoupment- The Secretary shall establish a process under which the Secretary shall recoup the amount of any grant awarded under paragraph (1) or (2) of subsection (a) if the Secretary determines that, during the 5-year period beginning on the first date that any such grant is awarded to the State, the State--

(1) terminated the State's short-time compensation program; or

(2) failed to meet appropriate requirements with respect to such program (as established by the Secretary).

(g) Funding- There are appropriated, out of moneys in the Treasury not otherwise appropriated, to the Secretary, \$100,000,000 to carry out this section, to remain available without fiscal year limitation.

(h) Reporting- The Secretary may establish reporting requirements for States receiving a grant under this section in order to provide oversight of grant funds.

(i) Definitions- In this section:

(1) SECRETARY- The term 'Secretary' means the Secretary of Labor.

(2) SHORT-TIME COMPENSATION PROGRAM- The term 'short-time compensation program' has the meaning given such term in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

(3) STATE; STATE AGENCY; STATE LAW- The terms 'State', 'State agency', and 'State law' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

## SEC. 2165. ASSISTANCE AND GUIDANCE IN IMPLEMENTING PROGRAMS.

(a) In General- In order to assist States in establishing, qualifying, and implementing short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)), the Secretary of Labor (in this section referred to as the 'Secretary') shall--

(1) develop model legislative language which may be used by States in developing and enacting such programs and periodically review and revise such model legislative language;

(2) provide technical assistance and guidance in developing, enacting, and implementing such programs;

(3) establish reporting requirements for States, including reporting on--

(A) the number of estimated averted layoffs;

(B) the number of participating employers and workers; and

(C) such other items as the Secretary of Labor determines are appropriate.

(b) Model Language and Guidance- The model language and guidance developed under subsection (a) shall allow sufficient flexibility by States and participating employers while ensuring accountability and program integrity.

(c) Consultation- In developing the model legislative language and guidance under subsection (a), and in order to meet the requirements of subsection (b), the Secretary shall consult with employers, labor organizations, State workforce agencies, and other program experts.

#### SEC. 2166. REPORTS.

(a) Report-

(1) IN GENERAL- Not later than 4 years after the date of the enactment of this Act, the Secretary of Labor shall submit to Congress and to the President a report or reports on the implementation of the provisions of this subtitle.

(2) REQUIREMENTS- Any report under paragraph (1) shall at a minimum include the following:

(A) A description of best practices by States and employers in the administration, promotion, and use of short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)).

(B) An analysis of the significant challenges to State enactment and implementation of short-time compensation programs.

(C) A survey of employers in all States to determine the level of interest in participating in short-time compensation programs.

(b) Funding- There are appropriated, out of any moneys in the Treasury not otherwise appropriated, to the Secretary of Labor, \$1,500,000 to carry out this section, to remain available without fiscal year limitation.

## **Operating Instructions for Federal Short-Time Compensation (STC)**

### **Introduction**

On February 22, 2012, the President signed the Middle Class Tax Relief and Job Creation Act of 2012 (Act) Public Law (Pub. L.) 112-96, which includes the Layoff Prevention Act of 2012 (Subtitle D of title II of the Act, section 2160 through section 2166 of the Act). Section 2163 of the Act permits states that currently do not have laws that provide for the payment of STC to enter into an agreement with the Secretary of Labor (Secretary) to implement a temporary federal STC program. Federal STC programs will be administered by the states acting as agents of the Secretary. States that choose to administer a federal STC program may begin operating the program starting from the date they enter into an agreement<sup>1</sup> with the Secretary through May 24, 2014.

The Act provides a (modified) definition of STC, adding it as a new subsection (v) to Section 3306 of the Federal Unemployment Tax Act (FUTA). All federal STC payments must be made in accordance with Section 3306(v), FUTA. The total amount of federal STC paid to an individual under an STC plan submitted by an employer and approved by the state must not exceed 26 times the amount of regular compensation (including dependents' allowances) under the applicable state law payable to that individual for a week of total unemployment. Also, the state must not approve an STC plan submitted by an employer that would provide payments to any individual(s) employed by such employer on a seasonal, temporary, or intermittent basis (see definitions below).

The federal government will reimburse the states for one-half (50 percent) of the amount of federal STC paid to an individual. The employer who submits an STC plan, which is approved by the state, is required to pay the state the remaining 50 percent of the federal STC benefit costs. Section 2163 of the Act allows "eligible" states (i.e., states without laws that meet the definition of Section 3306(v), FUTA) to administer and receive reimbursement of 50 percent the benefit costs of federal STC under the agreement. The amounts paid by the employer will be deposited into the state's account in the Unemployment Trust Fund (UTF); however, the amounts paid by the employer must not be used by the state in determining an employer's contribution rate under Section 3303(a) (1), FUTA. This means that the reimbursements may not be credited to the employers' reserve or applied as a voluntary contribution.

The Department of Labor (Department) is issuing this guidance to states as operating instructions for federal STC, including fiscal and reporting instructions. These operating instructions supplement UIPL No. 22 -12, *Short-Time Compensation*

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<sup>1</sup>This agreement may be terminated by either party upon 30 days written notice.

*Provisions in the Middle Class Tax Relief and Job Creation Act of 2012.* States must not deviate from these operating instructions without the prior approval of the Department.

**Definitions:** This section contains the definitions of terms used throughout this document. References are made to Section 2163 of the Act.

1. “Act” means the Middle Class Tax Relief and Job Creation Act of 2012.
2. “Affected Unit” means a specified plant, firm, business, department, shift, or other definable unit (i.e., group) consisting of at least two employees.
3. “Agreement” means the agreement between a state and the Secretary of Labor (Secretary) under which the agency makes federal STC payments acting as the Department’s agent (see draft Attachment III).
4. “Applicable State Law” means the state law of the state which is the application state for an individual or employer.
5. “Department” means the U.S. Department of Labor.
6. “Effective Date” means the date of enactment of the Act, February 22, 2012.
7. “Federal STC program” means the temporary STC program under Section 2163 of the Act that is operated under an Agreement with the Secretary to provide STC to eligible workers and under which 50 percent of the benefit costs are reimbursed by the federal government (provided that the state's law does not provide for the payment of STC as defined in Section 3306(v), FUTA).
8. “Intermittent employment” means “intermittent employment” as defined under state law. If the state law does not include a definition of this term, “intermittent employment” means employment that is not continuous but may consist of periodic intervals of weekly work and intervals of no weekly work. (See UIPL No. 22 - 12).
9. “Rapid Response” means those activities necessary to plan and deliver service(s) to enable dislocated workers to transition to new employment as quickly as possible, following either a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation. (WIA Final Rule, 20 CFR part 665.300(a)-665.330)
10. “Seasonal employment” means seasonal employment as defined under state law. If the state law does not include a definition of this term, “seasonal employment” means employment with an employer which experiences at least a twenty percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous 3 years as reported to the state agency, and/or employees are hired to work on a temporary basis by employers that need extra help during a particular season. (See UIPL No. 22 - 12.)
11. “Secretary” means the Secretary of Labor of the United States.

12. “Short-Time Compensation” or “STC” means compensation that conforms to the definition in Section 3306(v) of FUTA.
13. “State” means the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.
14. “STC employee” means an eligible employee employed by an STC employer covered by an STC employer plan approved by the state.
15. “STC employer” means an employer with a state-approved STC plan.
16. “STC employer plan” means a written plan submitted by an employer that meets the requirement of Section 3306(v), FUTA.
17. “STC weekly benefit amount (WBA)” means the amount of weekly STC payable for a reduced workweek as a proportion of the UC WBA corresponding to the number of hours in the reduced workweek.
18. “Temporary employment” means “temporary employment” as defined under the state law. If the state law does not include a definition of this term, “temporary employment” means employment where an employee is expected to remain in a position only a limited, as opposed to indefinite, period of time and/or is hired by a temporary agency to fill a gap in an employer’s workforce. (See UIPL No. 22 - 12.)
19. “Unemployment Compensation” or “UC” means cash benefits (including dependents’ allowances) payable to eligible individuals with respect to their unemployment under state law.

**Operating Instructions:**

1. Federal STC Program Claimant Eligibility.

- a. Basic Eligibility Requirements. To qualify for STC, employees must be part of an affected unit or group of employees, under a state-approved STC employer plan, whose workweek(s) have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the state to be appropriate, but in no case by more than 60 percent.

STC employees must be eligible for UC and have a remaining entitlement to UC in order to be eligible to receive STC. Employees participating in the STC employer plan must not be disqualified from UC on account of their participation in that plan. The amount of UC WBA payable to an employee participating in an STC employer plan is the proportion of the UC WBA corresponding to the number of hours in the reduced workweek. Employees must file continued claims (weekly or biweekly) as required under state law to receive STC payments.

- b. Individual Entitlements. As participants in an STC employer plan, individuals may:
  1. Participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Investment

Act (WIA) of 1998) to enhance job skills if the program is approved by the state;

2. Receive STC as provided in the STC employer plan up to 26 times the amount of regular UC (including dependents' allowances) payable under the applicable state law to the individual for a week of total unemployment;
3. Receive a payment of STC in the full UC weekly benefit amount for a week in which there is no work for the employee; and
4. Be entitled to a partial STC payment if they have earnings from an employer other than the STC employer (i.e., such earnings must reduce the STC payment in accordance with state law).

2. Federal STC Program Employer Requirements. Employer participation in a federal STC program is voluntary.

a. Basic Eligibility Requirements. An interested employer(s) must submit a plan to the state that is consistent with employer obligations under applicable federal and state laws. To participate in a federal STC program, in addition to meeting applicable state law provisions, employers must:

1. Identify and describe the affected unit of at least two workers that will have reduced work hours as part of an STC employer plan;
2. Provide a written STC employer plan to the state which includes the reason(s) for the reduction of the employees' work hours and the exact number of weeks of participation (not to exceed 26 weeks times the employees' UC WBA) and an estimate of the number of employee layoffs that would have occurred absent the ability to participate in the federal STC program (Note: the state may add other requirements to the plan subject to approval by the Department);
3. Provide assurance of compliance with employer obligations under federal and state laws;
4. Provide evidence of reduced work hours for not less than 10 percent and by not more than the percentage, if any, that is determined by the state, but in no case more than 60 percent of the normal weekly hours of work; and
5. Contribute one-half (50 percent) of the amount of the benefit costs of STC paid under the STC employer plan. This amount will be paid into the state's unemployment fund and will not be used for the purposes of calculating an employer's contribution rate under Section 3303 (a)(1), FUTA. Note: If employers fail to reimburse their share (50 percent) of STC costs under the federal STC program, the state must terminate the STC employer plan(s) approved under that program and collect the amounts owed through applicable state collection procedures, including any penalty and interest as required under state law.

3. State Responsibilities in Administering a Federal STC Program. Participating states must ensure they operate the federal STC program in accordance with the Agreement between the state and the Secretary, which means the state must:
  - a. Ensure STC payments are made in accordance with the requirements of Section 3306(v), FUTA, as added by Section 2161(a) of the Act;
  - b. Ensure that no STC employer plan is approved that permits the STC employer to pay STC to individuals who are employed in seasonal, temporary, or intermittent employment with the STC employer;
  - c. Ensure that STC employers pay 50 percent of the benefit costs of STC paid to their employees and ensure these payments are paid into the state's account in the UTF and are not used for the purposes of calculating the employer's contribution rate under Section 3303 (a) (1), FUTA;
  
4. Operating Procedures Necessary for Participating States. In implementing a federal STC program, a state UC agency must:
  - a. Develop a process to review, approve/disapprove, modify and revoke, as necessary, an STC employer plan;
  - b. Develop procedures related to STC employer appeals;
  - c. Develop procedures and processes for federal STC initial and continued claims taking and processing as well as monitoring to ensure STC payments are made promptly and properly;
  - d. Develop a coordinated enrollment and outreach strategy with potential state partners (i.e., Rapid Response teams, American Job Centers (also known as One-Stop Career Centers), Business Services representatives, and Labor Organizations) to educate appropriate parties and encourage eligible employers to participate in federal STC to avert layoffs;
  - e. Develop required reporting of federal STC program/activities information in accordance with the Department's guidance; and
  - f. Develop state operating instructions and training for staff to ensure timely and proper payments of STC.

Note: WIA Rapid Response funds may be used to support the state's federal STC program outreach strategy. Furthermore, states may submit SBR grant proposals to support federal STC implementation and outreach costs for those activities.

5. Federal STC Monetary/Non-Monetary Determinations. Individuals must be eligible for UC and have remaining entitlement to UC in order to receive STC.
  - a. Federal STC Weekly Benefit Amount (WBA). STC is limited to 26 times the amount of regular compensation (including dependents' allowances) payable under the applicable state law for a week of total unemployment.

The WBA for STC is calculated by first determining the individual's UC WBA (including dependents' allowances), as if the individual were totally unemployed. The federal STC rate is then determined by multiplying the WBA by the percentage, agreed upon and approved in the STC employer plan, which reduced the employee's workweek (i.e., hours of work). The resulting calculation would then be rounded, if necessary, to the nearest whole dollar according to the applicable state law. The result, after the rounding, is the federal STC WBA.

Example: An STC employer reduces the hours of an STC employee by 20 percent of the employee's 40-hour workweek. The STC employee has a UC WBA of \$400 with a \$25 dependents' allowance (DA).

UC WBA	\$400.00
DA	+\$25.00
Total WBA and DA	\$425.00
20 percent reduction in workweek	x.20
Federal STC payment	=\$85.00

Changes in Work Hours. If an STC employee works for another employer in addition to the STC employer during a week and his or her combined hours of work for both employers are equal to or greater than the usual weekly hours of work with the STC employer, the employee is not entitled to STC for that week ("week" is defined under the applicable state law).

If an STC employee works in the same week for both the STC employer and another employer and his or her combined hours of work for both employers are less than his or her usual weekly hours of work, the benefit amount payable for that week will be the ratio of the UC WBA times the combined hours worked that week.

If an STC employee does not work during a week for the STC employer (or any other employer) and is otherwise eligible for UC under the applicable state law s/he will receive his or her full UC WBA for that week.

- b. Non-Monetary Determinations. STC employees are considered to be job attached and will meet the availability for work and work search test requirements while collecting short-time compensation by being available for the workweek as required by the state agency.
- c. Notices to Individuals. The state must give written notice to the STC employees of any determination or redeterminations. Each notice must include information about the right to reconsideration or appeal, or both, using the same process that is used for regular UC. In addition, the state

must provide the following notice to all STC claimants filing an initial claim for federal STC:

NOTICE

Under 18 U.S.C. §1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a Federal Offence, punishable by a fine or imprisonment for not more than five years, or both, under Title 18 of the United States Code.

6. Benefit Charging. Federal STC payments, unlike state STC payments, are non-chargeable payments, and must not impact the federal STC employer's contribution rate under Section 3303 (a)(1), FUTA.
7. Termination of the Federal STC Agreement. A state may terminate the Agreement with the Department upon providing 30 days written notice to the Department.
8. Termination of Federal STC Payments. If a state enacts a state law providing for the payment of STC under an STC program that meets the definition of the program under Section 3306(v), FUTA, as added by Section 2161(a) of the Act, the state will not be eligible to receive federal STC reimbursements beginning after the effective date of the state law. However, the state may be eligible to receive 100 percent federal reimbursements (up to 156 weeks) under Section 2162(a) of the Act (for payments of state STC) from the effective date of the state law and after the state signs/executes the appropriate Agreement (See UIPL No. 22 -12).
9. Notification. States entering into a federal STC agreement should explain to the employer community the availability and benefits of its federal STC program. The Department strongly encourages states to leverage WIA Rapid Response funds to support this layoff aversion strategy, if possible. Furthermore, states may submit Supplemental Budget Request grant proposals to support federal STC program implementation and outreach costs for those activities (See UIPL No. 22-12).
10. Written Agreement or Memorandum of Understanding (MOU). The Department recommends the UC agency enter into a written agreement or MOU with participating partners (i.e., Rapid Response Teams, Business Service Representatives, and/or American Job Centers (aka, One-Stop Career Centers). The written agreement/MOU should contain:
  - a. Names of all the parties to the agreement;
  - b. A brief description of the collaboration process jointly developed;

- c. Identification of those partners/agencies that will provide the specific services;
  - d. Description(s) of how feedback will be provided; and
  - e. Description(s) of the role of the service provider(s).
11. Record Maintenance and Disposal of Records. The state must maintain federal STC claims and payment data (including data on disqualifications, and appeals) as required by the Department.
- a. Record Maintenance. Each state must maintain records on the administration of the federal STC program, and make such records available for inspection, examination, and audit by federal officials or employees as the Secretary or the Department may designate or as may be required by the state law.
  - b. Disposal of Records. Electronic and paper records created in the administration of the federal STC program must be maintained by the state for three years after initial action (including appeals or court action) on the federal STC claim, or for less than the three-year period if copied by micro photocopy or by electronic imaging method. At the end of the three-year period, the federal STC records will be disposed of in accordance with state law.
12. Disclosure of Information. Information in records made and maintained by the state in administering Section 2163 of the Act must be kept confidential. Information in the records may be disclosed only in the same manner and to the same extent as information with respect to regular UC, and the entitlement of individuals, thereto, may be disclosed under provisions of the applicable state law meeting the requirements of 20 CFR part 603. This provision on the confidentiality of information obtained in the administration of Section 2163 of the Act will not apply, however, to information, reports and studies that have no personally identifiable information.
13. Redetermination. An STC employee filing a federal STC initial claim or weekly certification has the same rights to a reconsideration of the state's determination as provided claimants under the applicable state law for regular UC claims.
14. Appeals and Hearings.
- a. Applicable State Law. The applicable state law provisions concerning the right of appeal and fair hearing from a determination or redetermination or entitlement to regular compensation will apply to determinations and redeterminations of eligibility for or entitlement to federal STC. This also applies to the approval of STC employer plans.
  - b. Rights of Appeal and Fair Hearing. The right of appeal and opportunity for a fair hearing to claims for federal STC must be consistent with these

instructions and with Sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and 503(a)(3)).

c. Promptness of Appeals Decisions.

- 1) Decisions on appeals under the federal STC program must be in accordance with the “Standard for Appeals Promptness-Unemployment Compensation” in 20 CFR Part 650.
- 2) Any applicable state law provision allowing the advancement or priority of UC cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, must apply to proceedings involving entitlement to federal STC.

d. Inviolate Rights to Federal STC. Except as specifically provided in these instructions, the rights of individuals to federal STC will be protected in the same manner and to the same extent as the rights of persons to regular UC are protected under the applicable state law. The measures must include protection of claimants for federal STC from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, of their rights to federal STC. In the same manner and to the same extent, individuals will be protected from discrimination and obstruction in applying for and receiving federal STC.

15. Fraud, Overpayment and Recovery. Recovery of any overpayment established on a claim for federal STC will be conducted in accordance with the applicable state law for the recovery of regular UC overpayments.

## **Reporting Instructions**

1. **General.** The federal STC ETA 5159, Claims and Payment Activities Work-share Report (OMB No. 1205-0010) must be submitted electronically through the UI Required Reports electronic reporting system. Federal STC activity should also be reported on the ETA 2112 UI Financial Transaction Summary Report (OMB No. 1205-0154) as specified below in section 2. Reporting will begin with the first reporting period in which the state enters into a federal-state Agreement to operate federal STC. States should refer to the most recent version of ET Handbook No. 401, the UI Reports Handbook, for copies of the reports, due dates, and further instruction.

2. **Data Elements to be Reported.**

- a. ETA 5159. The STC-specific report form for the ETA 5159 has one additional cell that must be reported. This cell for federal STC describes the number of employers with STC plans.

**Section D cell C10, Number of Participating Employers.** Enter the total number of employers who have state agency approved federal STC plans. If a single employer has multiple plans approved by the state, or multiple plans within an establishment, count that employer as an STC employer only once.

- b. ETA 2112. Transactions involving federal STC reimbursed with federal funds must be reported in the aggregate on the electronic ETA 2112 report. Information reflecting federal STC transactions must be reported as follows:
- 1) **Line 23b, Short-Time Compensation - Federal**. Report on line 23b, column F the amount of federal STC funds deposited into the state's benefit payment account.
  - 2) **Line 42b, Short-Time Compensation - Federal**. Report on line 42b, column F the net amount of STC paid for using federal STC funds. States are to report gross federal STC benefit disbursements in column F regardless whether amounts of federal tax withholdings are applied to federal STC benefit payments.
3. **Office of Management and Budget (OMB) Approval**. This UIPL and its attachments were submitted to OMB for Paperwork Reduction Act approval. The UIPL and attachments were approved by OMB (OMB Number 1205-0499, expires 12/31/2012) on June 14, 2012. The Employment and Training Administration (ETA) is currently in the process of renewing this collection, and extending its authorization to collect data related to the federal STC program through 2015.

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**Layoff Prevention Act of 2012**

**Federal Short-Time Compensation (STC) Program  
Operated by the State Workforce Agency**

**AGREEMENT BETWEEN**

**THE STATE OF**

**AND**

**THE SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR**

The Secretary of Labor, U.S. Department of Labor (Department), and the State/Commonwealth of \_\_\_\_\_, in order to carry out the provisions of Section 2163 of Title II of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96), hereinafter referred to as the “Act,” hereby agree as follows:

- I. The \_\_\_\_\_ State Workforce Agency, hereinafter referred to as the “Agency,” will make payments of Federal STC in accordance with Section 2163 of the Act (which is incorporated herein by reference), and will cooperate with the Department, and with other state agencies in making the payments.
- II. The Agency and other appropriate state officials will perform all of the functions and duties undertaken under this Agreement in accordance with the terms of this Agreement and the regulations, operating instructions, or guidance issued by the Department.
- III. If a state enters into this Agreement and subsequently enacts a state law providing for the payment of STC that meets the definition under the Federal Unemployment Tax Act (FUTA) Section 3306(v), the state—
  - a. Will not be eligible for the 50 percent reimbursement of Federal STC under the requirements of Section 2163 of the Act for weeks of unemployment beginning after the effective date of the state law; and

May be eligible to receive 100 percent reimbursement of STC paid under the requirements of Section 2162 of the Act for any weeks of unemployment beginning after the effective date of the state law conforming with 3306(v), FUTA and when the state enters into an agreement with the Department providing the terms and conditions for such reimbursement.

IV. The Agency will maintain those records pertaining to the administration of Section 2163 of the Act as the Department requires, in accordance to 29 CFR part 97.42 Retention and access requirements for records, and will make all of these records available for inspection, examination, and audit at the time and by those Federal officials or employees as the Department may designate or as may be required by law.

V. The Agency will furnish to the Department or its agents the information and reports the Department may require, and will participate fully in any studies or evaluations that the Department uses for carrying out the purposes of Section 2163 of the Act.

VI. At the beginning of each month, the Department will make available in the Payment Management System an amount equal to 50 percent of the estimated amount needed by the state for payment of Federal STC during that month, adjusted for any excess or shortfall in amounts provided in any prior month. For each of the first three months after implementation of the program, the state should provide an estimate of expected Federal STC. For each month thereafter, the estimated amount to be made available to the state will generally be equal to 50 percent of the Federal STC paid in the most recent month for which data are reported, adjusted for any excess or shortfall in amounts provided in prior months. Estimates may be adjusted during the month at the Agency's request, if necessary. The Department intends to use the amounts of Federal STC reported on the ETA 2112 as the basis for estimates and adjustments.

In making Federal STC payments, the Agency agrees that:

- a. The Agency will make Federal STC payments in accordance with Section 3306(v), FUTA, including approval by the Agency of any Federal STC plan(s) submitted by an employer(s).
- b. The Department will make no payments to the Agency for Federal STC paid to any individual covered by a state-approved employer's Federal STC plan in excess of 26 times the amount of regular compensation (including dependents' allowances) under the state law payable to the individual for a week of total unemployment.

- c. The Department will make no payments to the Agency for benefits paid to any individual covered by a state-approved employer's Federal STC plan if the individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.
- d. The Department will make no payment to the Agency with respect to payments to any individual covered by a state-approved employer's Federal STC plan for more than 104 weeks of Federal STC benefits or for weeks of unemployment of an individual covered by an employer's STC plan ending on or after May 24, 2014.
- e. Federal STC plans approved by the Agency must provide that the employer will pay the state an amount equal to one-half of the amount (50 percent) of Federal STC paid to an individual under the plan. The amount will be deposited in the state's account in the Unemployment Trust Fund and will not be used for purposes of calculating a participating employer's contribution rate under Section 3303(a)(1), FUTA.

VII. The Agency will use all funds paid to the state for the payment of benefits solely for the purpose of making Federal STC payments. The Agency will return to the United States Treasury, upon request of the Department, any of these funds (a) if the Department finds that the funds were not needed for that purpose or that the funds have been used for a purpose other than that for which they were intended, or (b) upon termination of this Agreement. The "Audit Requirements for Grants, Contracts, and other Agreements," 29 CFR part 96, will apply to disagreements under this section.

VIII. The Agency will take any action reasonably necessary to recover for the account of the United States all benefit amounts improperly paid and restore any lost or misapplied funds paid to the state for benefits or the administration of this Agreement.

IX. To the extent that agencies of the state obtain bonds to protect funds of the state, the Agency will obtain bonds to protect funds made available to it for the payment of benefits and the costs of administration of this Agreement. The pro rata cost of the bonds will be considered a necessary cost of administration. If under state law the state acts as a self-insurer of state funds and does not obtain bonds to protect them, the Agency must so inform the Department in writing, and in the case the state will act as a self-insurer with respect to funds which are paid to the state under this Agreement.

X. The Agency will apply the methods of administration required by Section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)) to the functions undertaken under this Agreement.



**DRAFT**

**UNEMPLOYMENT INSURANCE (UI) PROGRAM  
FY 2012 ANNUAL FUNDING AGREEMENT ADDENDUM  
for  
MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012**

**Grant/Agreement No. UI-XXXXX**

(To be completed by DOL)

**CFDA # 17.225 Unemployment Insurance  
CFDA#17.207 Employment Service**

- 1. Relationship to Other Agreements:** Unless inconsistent with specific terms and conditions provided herein, the terms and conditions of the Fiscal Year (FY) 2012 UI Program annual funding agreement between the U.S. Department of Labor, Employment and Training Administration (Grantor) and the **STATE/COMMONWEALTH** of \_\_\_\_\_ (Grantee) apply to the funds identified in Section 2 and are hereby incorporated by reference.
- 2. Grant Funds:** This annual funding grant agreement addendum addresses additional requirements applicable to funds appropriated in the Middle Class Tax Relief and Jobs Creation Act of 2012 (the Act) for Reimbursement of Short-Time Compensation (STC) benefit payments and for applicable administrative costs.
- 3. Purposes and Principles:** A major goal of the Act is to have State Workforce Systems pursue strategies that would positively impact employment levels by satisfying certain needs of unemployed workers and employers. To that end the Act makes funds available to states engaging in programs that have been shown capable of supporting the goal. Funds are also made available to evaluate the various strategies to help determine their effectiveness and to understand their impact on workers, employers, and the labor market. Consistent with transparency and accountability principles, reporting and monitoring of activities and associated funding are essential and grantees are expected to support these activities through compliance with all related requirements.
- 4. Limit on Funds:** Funds appropriated or otherwise made available to states by the Act are to be strictly used for the intended purposes as stated in agreements and guidance or operating instructions issued by the Department.
- 5. Reporting: Program Management and Financial Expenditure:** For the purposes of funding, accountability, monitoring, administering, and evaluating the various programs and activities required or permitted by the Act, the Grantee agrees to furnish timely to the Department the information, as approved by OMB under the Paperwork Reduction Act, as the Department, or its representative, requests. The manner in which states will satisfy such requests will be conveyed in guidance issued by the Department.

6. **Applicable Authority:** Funds authorized under the Act and provided under this grant agreement addendum must be expended in accordance with all applicable Federal statutes, regulations, policies, and guidance.
7. **Grant Expenditure Period:** The period of availability of funding varies for the different components and will be provided in the Notice of Obligation as funding is provided.
8. **Notice of Obligation:** Funds will be obligated and allocated via a Grant Modification/Notice of Obligation (NOO modification) to the FY 2012 annual funding agreement/grant. Obligations and costs may not exceed the amount obligated by the NOO modification unless otherwise modified by the Grantor. Upon execution of this addendum, the NOO modification to the FY 2012 grant will be issued. Funds are obligated for the amount indicated in the NOO grant modification document in accordance with the Grantee's UI allotment levels. The Federal obligation level will be amended by the Grant Officer to increase (or adjust) amounts available to the Grantee as funds become available for obligation and additional NOO (or Deobligation) grant modifications are required and issued.
9. **Signatory Information:** By signing below, the signatories agree to the terms and conditions of this agreement addendum on behalf of their respective agencies indicated below. In addition, the Grantee's expenditure of any funds properly granted hereunder constitutes acceptance of the award, including any new or additional terms and conditions as may be attached hereto.

**GRANTEE:**

(State/Commonwealth)

	TAX EIN#	
Agency Name		
	PMS EIN#	
Mailing Address	(If known)	
	PMS PIN	
ACCT#		
DUNS#		
BY _____		
Governor/Authorized Signatory	Signature	Date
(Print name)		
Title	Email	
Address		

**FOR GRANTOR: U.S. Department of Labor/Employment and Training Administration; 200 Constitution Ave NW; Room N-4716; Washington, DC 20210**

THOMAS C. MARTIN	Signature	Date
Grant Officer		