

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI/EUC
	CORRESPONDENCE SYMBOL OUI/DFAS
	DATE March 8, 2013

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 13-13

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Implementation of Sequestration under the Budget Control Act of 2011 for the Unemployment Insurance Programs for Fiscal Year 2013

1. Purpose. To advise State Workforce Agencies (SWAs) of the manner in which the Department of Labor (Department) plans to apply sequestration to Unemployment Insurance (UI) programs for fiscal year (FY) 2013, so the SWAs can make the necessary operational changes.

2. References.

- Federal-State Extended Unemployment Compensation Act of 1970 (EB) (Pub. L. 91-373);
- Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) (Pub. L. 99-177);
- Budget Control Act of 2011(BCA)(Pub. L. 112-25);
- Consolidated Appropriations Act, 2012 (Pub. L. 112-74);
- Continuing Appropriations Resolution, 2013 (Pub. L. 112-175);
- Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96);
- American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112-240);
- Unemployment Insurance Program Letter (UIPL) No. 23-08 dated July 7, 2008; and
- UIPL No. 04-10, Change 3, dated July 23, 2010, and Change 9, dated March 5, 2012.

3. Background. The BCA amended the BBEDCA to require reductions in budgetary authority, known as sequestration, beginning on January 2, 2013, unless Congress passed, and the President signed, a bill that reduces the deficit by at least \$1.2 trillion over 10 years. The ATRA amended the BBEDCA to delay the sequestration implementation date from January 2, 2013, to March 1, 2013. As required by the BBEDCA, the President issued a sequestration order on March 1, 2013.

The BBEDCA, as amended, requires \$85 billion be reduced from the FY 2013 budgetary resources, split between defense and non-defense portions of the budget. The BBEDCA, as amended, exempts some programs, projects, activities (PPAs), and accounts and requires

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separate percentage reductions to be applied to non-exempt discretionary and mandatory PPAs. The percentage reductions applicable to non-defense FY 2013 budgetary resources are 5.0 percent for discretionary PPAs and 5.1 percent for mandatory PPAs. Supplementing the sequestration order, the Office of Management and Budget (OMB) issued its Report to Congress on the sequestration for FY 2013. That OMB report provides calculations of the amounts and percentages by which various budgetary resources are required to be reduced, and a listing of the reductions required for each non-exempt budget account. (The report can be found at:

http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjcsequestrationreport.pdf

To provide states reasonable time to plan for these budget reductions, the Department will apply the reductions to UI programs generally beginning on or after March 31, 2013. The Department has also determined that it will not apply the percentage reductions to benefits that have already been paid, meaning that no benefits already paid will be recovered to satisfy the sequestration reductions.

Since the sequestration percentage reductions apply to the budgetary resources provided for all of FY 2013 (October 1, 2012 through September 30, 2013), the actual reductions required to be achieved during the remainder of FY 2013 will require higher percentage reductions to the remaining available budgetary resources. In general, the higher percentage reductions to be applied were determined by applying the appropriate sequestration percentage to the FY 2013 budgetary resources and dividing the result by the estimated budgetary resources to be expended for the period beginning on March 31, 2013, and ending on September 30, 2013.

4. Impact of Sequestration on the UI Programs.

Below is a list of PPAs related to the UI programs and the applicability of sequestration to each PPA:

The following PPAs are exempted from sequestration:

- 1) Unemployment compensation paid by a state from its account in the Unemployment Trust Fund;
- 2) Title XII, Social Security Act (SSA), advances to states;
- 3) Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Service-members (UCX);
- 4) Short-Time Compensation (STC) grant funds authorized in Section 2164 of Pub. L. 112-96; and
- 5) Self-Employment Assistance (SEA) grant funds authorized in Section 2182 of Pub. L. 112-96.

Note: Although the Trade Adjustment Assistance (TAA) program is not exempt from sequestration, the Department has determined that Trade Readjustment Allowances (TRA), Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment

Assistance (RTAA) benefits under the TAA program will not be reduced. The Department plans to apply the TAA program sequestration to other funds available under the program, which is not expected to affect the amount of TRA, ATAA, or RTAA benefits that are payable.

Note: The Federal Emergency Management Agency advises that there is no expected impact on Disaster Unemployment Assistance (DUA) administrative funding or benefits.

Sequestration applies to the following discretionary PPAs:

- 1) UI state administrative grants under Title III, Social Security Act;
- 2) Administrative funding for UCFE, UCX, and the administrative funding for the provision of TRA, ATAA, and RTAA benefits under the TAA program;
- 3) Reemployment and Eligibility Assessments (REAs) for regular UI program claimants; and
- 4) UI National Activities.

Sequestration applies to the following mandatory PPAs:

- 1) Emergency Unemployment Compensation (EUC) benefits and administrative funding and the Federal share of EB benefits;
- 2) EUC-related Reemployment Services and Reemployment and Eligibility Assessments (RES/REAs); and
- 3) Federal reimbursement of state STC benefit costs authorized in Section 2162 of Pub. L. 112-96.

Details for Sequestrable Activities

State UI Administrative Grant Funds

Funding for administration of state UI programs has been provided only through March 27, 2013, when the appropriation under the current continuing resolution (CR) funding the federal government expires. Assuming that the current CR level will be continued for the remainder of the fiscal year, the Department anticipates that the reduction can be absorbed by reducing above base distributions for the final three quarters of FY 2013. (The UI-3 report for the quarter ending March 31, is due on May 1 so that the reduction will be applied beginning with the reimbursements for the second quarter of FY 2013.) An additional factor potentially impacting funding needs is the Average Weekly Insured Unemployment (AWIU) trigger. If workloads rise above the AWIU trigger and additional funding is made available in accordance with the appropriation language allowing for \$28.6 million per 100,000 increase in the actual AWIU, the \$28.6 million factor would be reduced by 5.0 percent.

Administrative funding for UCFE, UCX, and TRA, ATAA, and RTAA benefits is provided through above base funding and will be subject to the reduction applied to those funds.

National Activities

As with state administrative grants, National Activities has been funded under the CR only through March 27, 2013. While the sequester will result in a reduction of amounts available, it is anticipated that the reduction can be applied without adversely affecting current mission critical operations that support the administration of the UI program such as the information technology infrastructure that supports the Benefit Accuracy Measurement (BAM) program and UI reporting, the Interstate Connection Network or ICON, and the Information Technology Support Center. Should the appropriations for National Activities for the remainder of FY 2013 after the expiration of the current CR be reduced, funding for these activities will need to be reassessed.

Short Time Compensation Reimbursement

As one of the mandatory programs, Federal reimbursement of state STC benefits is subject to the 5.1 percent reduction in budgetary resources for FY 2013. Eligible states that have signed reimbursement agreements and have already received reimbursements for STC in FY 2013, will have an adjustment made to amounts reimbursed for the month of April to account for a 5.1 percent reduction in prior reimbursements received with respect to the period beginning October 1, 2012, through March 31, 2013. Reimbursements for STC benefits paid in each of the months of April through September will also be reduced by 5.1 percent.

For eligible states that sign an agreement during the remainder of FY 2013, the 5.1 percent reduction will apply to all reimbursements for STC benefits paid during FY 2013, i.e., for lump sum payments representing benefits already paid when a state signs an agreement and the monthly reimbursements as they are made. States that sign reimbursement agreements after September 30, 2013, will have the 5.1 percent reduction applied to eligible STC benefits paid during FY 2013.

REAs for Regular UI Program Recipients

Amounts available for distribution to states to conduct REAs for recipients of regular UI using the FY 2013 appropriation (which will not be known until enactment of an appropriation for the remainder of the fiscal year) will be reduced by 5.0 percent. The FY 2013 allocation for REAs has not yet been distributed to the states. Therefore, the impact of the sequestration reduction will be reflected in the allocation for the entire fiscal year when it is distributed. Because of reduced funding for FY 2013, participating states may need to reduce the number of REAs conducted or make other adjustments to the program. Additional states will not be added to the program. Further guidance will be forthcoming.

5. **Impact of Sequestration on EUC.** The EUC funding for both benefits and administration are subject to sequestration reductions of 5.1 percent for all of FY 2013. The Department has determined that the reductions will not be applied to benefit payments already made, meaning that no benefits already paid will be recovered to satisfy the sequestration reductions. In order to give states time to notify claimants and make the operational changes needed to implement the percentage reductions, the Department has determined that the

sequester will apply prospectively to weeks of unemployment beginning on or after March 31, 2013 (for most states this means the week ending April 6, 2013, will be the first week that will be impacted; in New York, it will be the week ending April 7, 2013).

EUC Administration

EUC administration is funded quarterly along with above-base workload for regular UI. For the remainder of the fiscal year, the sequestration reduction will be applied to above-base funds provided to the states in late May, August, and November. The sequester rate for the full FY 2013 is 5.1 percent, so achieving the sequester amount will require a higher percentage reduction in the last three quarters. The Department estimates that rate to be 6.9 percent.

Calculation of EUC Benefit Reduction

Based on a March 31, 2013, implementation date, the EUC benefit reduction will be 10.7 percent. The Department has determined that the best way to implement the reduction is to reduce each claimant's entitlement (maximum benefit amount (MBA) for claimants entering an EUC tier or remaining entitlement for claimants already in an EUC tier) and the weekly benefit amount (WBA) in each EUC tier for which they are eligible. The sequestration reduction applies to the actual WBA, MBA, or remaining entitlement—not to the formulas used to calculate them. For example, states must first determine the actual dollar amount of the EUC MBA absent sequestration. Then, the state would reduce this amount by the appropriate percentage to determine the sequestered EUC MBA.

For individuals with remaining entitlement in any EUC tier the week beginning March 31, 2013 (in New York, the week beginning April 1, 2013), their remaining entitlement and WBA will be reduced by 10.7 percent. For individuals entering any EUC tier the week beginning March 31, 2013 (in New York, the week beginning April 1, 2013), and for any week thereafter through September 28, 2013 (September 29, 2013 in New York) the MBA and WBA will be reduced by 10.7 percent.

If the state's calculation of the WBA, MBA, or remaining entitlement after applying the sequestration reduction does not result in a whole dollar amount, the state will round either up or down to the nearest dollar, in accordance with state UI law.

States should make the adjustments necessary to implement these reductions as soon as possible. However, recognizing there may be some states that are not able to implement these reductions on March 31, 2013, the applicable percentage reduction will increase the longer it takes for implementation to begin. The percentage reductions below illustrate the potential impacts of delaying implementation.

<u>1ST APPLICABLE WEEK OF UNEMPLOYMENT</u>	<u>PERCENTAGE CUT</u>
April 28 – May 4, (April 29 – May 5 in NY)	12.8%
June 2 – June 8, (June 3 – June 9 in NY)	16.8%
June 30 – July 6, (July 1 – July 7 in NY)	22.2%

States unable to implement the reductions on this timeline must contact their Regional Office for a determination of the necessary percentage reduction to apply to EUC benefits for the remaining weeks of unemployment in the fiscal year.

Realizing the difficulty some States may face in implementing weekly percentage reductions in a timely manner, the Department will work with States to consider other options that balance the statutory requirement to ensure that savings are realized by September 30 with the goal of maintaining a safety net for unemployed workers and their families.

EUC Option

If an EUC claimant has new entitlement to regular compensation in a subsequent benefit year, s/he will continue to be eligible for EUC instead of regular compensation provided s/he meets all four criteria outlined in section 4 of UIPL No. 04-10 Change 3 on the “EUC Option.” The determination required by section 4 of that UIPL will be made based on the EUC WBA determined before the sequestration reduction is applied to the WBA and the entitlement. However, the individual would be eligible for the EUC sequestration-reduced WBA.

Notifications to EUC Recipients

States must immediately begin notifying individual EUC claimants of the EUC payment reductions. States may start by notifying all individuals with active EUC claims. However, when individuals with remaining entitlement reopen their EUC claims, the state must notify them as well.

Such notification may be done through the mail, internet, interactive voice response system, or other means currently used by the state to notify or provide claimants with information. See sample language below.

Sample Notice to EUC Claimants

The Budget Control Act of 2011 (Public Law 112-25) requires across-the-board budget reductions to many federal programs, including the Emergency Unemployment Compensation (EUC) program. These reductions are generally known as “sequestration.” This means that payments of EUC for weeks that begin on or after March 31, 2013, must be reduced by 10.7 percent for each week of unemployment through September 2013¹.

¹ This sentence must be modified if the state delays implementation of the sequester reduction.

You will be sent a revised EUC monetary determination providing you with the new remaining entitlement and new weekly benefit amount for your EUC claim that began on [XXX]. You will be notified if there are subsequent changes affecting your EUC entitlement.

We also strongly encourage states to post information about sequestration of EUC benefits on state Web sites and in their American Job Centers, and to use social media to relay the information.

Once the state recalculates the EUC monetary entitlement under the sequestration reduction, a new monetary determination must be provided to each EUC claimant as soon as possible.

Appeals of EUC Monetary Determinations under the Sequestration

While a claimant may appeal the state's new monetary determination(s), the monetary reduction itself as required by sequestration is not an issue on which a state's UI appellate authority has any discretion since it is set by Federal law. The appellate authority may, however, determine whether the new WBA, MBA, or remaining entitlement was correctly calculated. Individuals may also appeal, and the appellate authority rule on, any overpayment determination(s) that result from these benefit reductions.

EUC RES/REAs

For each RES/REA completed, or substantially completed, during weeks beginning March 31, 2013, and through weeks ending September 28, 2013, the \$85 provided to fund these activities will be reduced by 10.1 percent. States withdrawing funds from the Payment Management System for RES/REA activities accomplished during that time period should only withdraw \$76.42 for each completed or substantially completed RES/REAs.

EUC Overpayments Due to Sequestration

Some EUC overpayments may result due to implementation of sequestration reductions. States must make necessary adjustments to correct any payment errors due to the sequestration in accordance with their redetermination authority and/or establish and recover overpayments when detected in accordance with section 6 of Attachment A to UIPL No. 23-08 and UIPL No. 04-10, Change 9.

Deductions from EUC WBAs

States must first apply the sequestration reduction to determine an individual's new EUC WBA before making any deductions for taxes, child support obligations, earnings, overpayment recoveries, or anything else permitted under state law. If the reduced WBA results in different amounts being deducted for certain obligations because sufficient funds are no longer available to continue to deduct the prior amounts, the state workforce agency may need to notify the appropriate agency or entity.

6. Impact of Sequestration on EB. The applicable percentage reduction to the Federal share of EB benefit costs is the same as is applicable to EUC benefits, (i.e., the Federal share is reduced by 10.7 percent for weeks of unemployment beginning on or after March 31, 2013, and ending with weeks of unemployment ending on September 28, 2013). Absent sequestration, the Federal share of EB is currently 100 percent. Unless a state were to amend its law to reduce EB benefits, as explained below, reduction in Federal sharing of EB due to sequestration means the state becomes responsible for paying the remaining EB share from its own funds, i.e., the amount represented by the 10.7 percent reduction.

Authority for States to Reduce EB Weekly Benefit Amounts due to Sequestration

Under the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), the EB WBA is “the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for such week for total unemployment.” (Section 202(b)(2), EUCA.) However, section 256(i)(2) of BBEDCA (2 U.S.C. 906(i)(2)) permits states to reduce EB WBAs if the Federal share of EB benefit costs is reduced under a sequestration order. That section provides:

- (A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 254 by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.
- (B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of the Internal Revenue Code of 1954(2 U.S.C. 906(i)(2)).

State law must validly authorize the reduction in EB WBAs as specified in BBEDCA. Note that actual reductions in Federal spending could not be achieved if WBAs are reduced without also reducing individuals’ remaining entitlement or MBA for EB. For this reason, state law must also provide for EB remaining entitlement and MBA reductions if it provides for reducing EB WBAs.

Any state amending its law to provide for these EB reductions must follow the EUC procedures described above, including providing notice to claimants and an opportunity to appeal.

7. Reporting Weekly UCFE Claims in STC Programs.

States use the ETA 539 report to provide totals for initial and continuing claims by program type: state regular, UCFE, UCX and STC/Workshare. States are currently directed to report UCFE and UCX activity in the cells provided for those programs, and to report STC/Workshare activity in the cells provided for that program. As a result of sequestration, State Workforce Agencies (SWAs) may approve Federal agencies’ STC/Workshare plans in

states that operate STC programs. Should this occur, any resulting STC activity resulting from furloughed Federal employees will be reported as STC activity on the ETA 539, consistent with the way such reporting is performed now. States will provide a break-out in the comments of the ETA 539 report detailing the program from which the various STC initial and continuing claims are reported as follows:

Regular STC initial claims:
Regular STC initial claim equivalents:
Regular STC continuing claims:
Regular STC continuing claim equivalents:
UCFE STC initial claims:
UCFE STC initial claim equivalents:
UCFE STC continuing claims:
UCFE STC continuing claim equivalents:
UCX STC initial claims:
UCX STC initial claim equivalents:
UCX STC continuing claims:
UCX STC continuing claim equivalents:

States do not need to make changes to their methods for preparing the ETA 538 report. Any activity that comes about as a result of Federal agencies adopting STC/Workshare agreements should be reported as STC/Workshare activity. In addition, reporting on the ETA 538 should continue to include STC/Workshare initial claim equivalents and STC/Workshare continuing claim equivalents.

The ETA 538 and ETA 539 are approved information collections (OMB# 1205-0028) and the comment field in that report has been, and continues to be, used by states to provide context and detail that are necessary to properly understand the data that are being reported.

8. **Implementation Costs.** Each state will receive \$40,000 from funds available for EUC administration to support activities necessary for sequestration implementation. Funds will be made available in the *Payment Management System* by March 29, 2013.
9. **Action Requested.** State Administrators are advised to provide this guidance to appropriate staff.
10. **Inquiries.** Questions should be directed to the appropriate Regional Office.