

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI /DL
	DATE April 10, 2014

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 26-13, Change 1

TO: STATE WORKFORCE AGENCIES

FROM: ERIC M. SELEZNOW /s/
Acting Assistant Secretary

SUBJECT: Request for Current Law on State Work Search Requirements

1. **Purpose.** To remind states to provide to the Department of Labor (Department), in their submissions under Form MA 8-7, information pertaining to state work search requirements in effect as of January 1, 2014, for conformity purposes.

2. **References.**

- Section 303(a) of the Social Security Act (SSA), 42 U.S.C. 503(a);
- Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3301 *et seq.*;
- Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96);
- 20 CFR 601.3;
- 20 CFR 609.1(d)(1), 614.1(d)(1), and 617.52(c)(1);
- Unemployment Insurance Program Letter (UIPL) No. 27-07, *Required Submission of Unemployment Compensation Materials Using Form MA 8-7*;
- UIPL No. 26-13, *Extension of Approval and Reminder of Requirement to Use Form MA 8-7, Transmittal for Unemployment Insurance Materials*; and
- Collection of Information, *Transmittal of Unemployment Insurance Materials*: OMB control number 1205-0222.

3. **Background.** Section 303(a)(6), SSA, requires, as a condition of a state receiving unemployment compensation (UC) administrative grants, that state law contain provision for the “making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to ensure the correctness and verification of such reports.” Departmental regulations at 20 CFR 601.3 in part implement this requirement by requiring the submission of “all relevant state materials, such as statutes, executive and administrative orders, legal opinions, rules, regulations, interpretations, court opinions, etc. . . .” Also, the regulations for the Unemployment Compensation for Federal Civilian Employees (UCFE) program at 20 CFR 609.1(d)(1) and for the Unemployment Compensation for Ex-servicemembers (UCX) program at 20 CFR 614.1(d)(1) require

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submission of certain documents to assure that states are properly administering these programs. The Trade Adjustment Assistance (TAA) program, which includes Trade Readjustment Allowances (TRA), provides similar regulatory requirements at 20 CFR 617.52(c)(1).

The MA 8-7 is the mechanism for implementing these submittal requirements, the purpose of which is to provide the Secretary of Labor (Secretary) with sufficient information to determine if: (a) state UC law conforms to FUTA, so that employers in a state may qualify for tax credits; (b) state UC law conforms to Title III, SSA, for the state to obtain administrative grants; and (c) the state fulfills its obligations under Federal UC programs.

- 4. New work search requirement in Federal law.** The Middle Class Tax Relief and Job Creation Act of 2012, enacted on February 22, 2012, included several UC program provisions. One of these was an amendment to add section 303(a)(12), SSA, as a new permanent provision to Federal UC law that adds a work search requirement as a condition for grant eligibility. All states reported that they already had a work search requirement before the 2012 enactment. However, state laws vary widely in the number of contacts required of claimants, how states monitor those work search contacts, and the effect of failure to conduct a work search – or an adequate work search – for a given week.

As set forth in 20 CFR 601.3, state law includes, among other documents, statutes, regulations, policy and procedure memoranda, and agency and court precedential decisions. State statutes and regulations may be publicly available online. However, policies and procedures, and decisions by the agency and court that the agency deems of precedential value, are frequently not readily available. By sending copies of current state laws, policies, and procedures governing state work search requirements, states will help ensure that the Department has up-to-date information to enable oversight of the UC program and provide the Secretary with sufficient information to determine if states are meeting their statutory program requirements. Moreover, receipt of current state laws will—

- inform Federal policies related to work search;
- inform strategies to support reducing work search improper payments;
- support informing other states regarding each state’s work search requirement, which will, in turn, support interstate benefit operations; and
- support program evaluation and research activities.

Thus, to assure the Secretary that states are in conformity with the new work search requirement in Federal law, states are reminded to provide, consistent with UIPL No. 27-07, statutes, regulations, policy and procedure memoranda, and precedential agency and court decisions relating to work search requirements. To help the Department better understand how states interpret their laws, states could, for example, provide the following information:

- Whether each requirement is based on statute, regulation, and/or interpretation or policy; citations and/or court case or appeal precedent references would be helpful.

- Number of employer contacts required: indicate the number of employer contacts an individual must make each week to meet requirements for eligibility. Indicate whether other activities may be substituted, and whether there are variations in the requirement based on occupation, geographic area, or other circumstances.
- Acceptable methods of employer contact: indicate whether individuals may apply for work in person, by phone, mail, fax, e-mail, web posting, etc.
- Full-time/part-time work search: indicate the type of work for which individuals may apply (full-time, part-time, suitable, other). Indicate whether there are any special requirements, including those for temporary help or day labor firms.
- Exemptions: indicate whether certain individuals are exempt from work search requirements (job-attached individuals, union members, seasonal workers, etc.).
- Reporting work search activities: indicate how often individuals must report. Indicate whether individuals must report by phone, online, in person, by mail, maintain a work search log, etc., and what information must be provided.
- Enforcement and monitoring: indicate whether work search contacts are reviewed weekly, biweekly, randomly, etc. Indicate whether verification of contacts is done by phone, by mail, etc.
- Formal warning: indicate whether failure to search for work, or failure to conduct an adequate search for work, results in formal warning prior to disqualification or other penalty.
- Consequences of failure to search for work: indicate whether failure to search for work, or failure to conduct an adequate search for work, results in disqualification or other penalty. Indicate nature of disqualification (e.g., number of weeks or re-qualifying wages required), if applicable.

Of course, states should submit all conformity materials as changes are made to state law, using the Form MA 8-7, to update the information previously provided and to allow for continuous review of state law for conformity purposes.

5. **OMB Approval.** Persons are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. As described in UIPL No. 26-13, OMB has approved the use of Form MA 8-7 for data collection under control number 1205-0222.
6. **Action Requested.** The Department reminds states to use the Form MA 8-7 to submit the information requested in section 4 of this UIPL, as well as supporting statutes, regulations, policy and procedure memoranda, and precedential agency and court decisions, to the Department no later than May 31, 2014. States should e-mail submissions to Information.StateUILegal@dol.gov.
7. **Inquiries.** Please direct inquiries to the appropriate regional office.
8. **Attachments.** Form MA 8-7 and instructions



**Transmittal for Unemployment Insurance Materials
US. Department of Labor Employment and Training Administration**

To: U.S. Department of Labor Office of Unemployment Insurance Room S4231 Attn: _____ 200 Constitution Avenue, N.W. Washington, D.C. 20210	From: (State)
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Check Appropriate Box(es)

- Statutory Material - Proposed and Enacted Legislation
- Rules and Regulations - Proposed and Final
- Official Interpretations
- Decisions and Orders Issued by States Courts, including material related to Consent Orders
- Precedential Administrative Decisions
- Appellate Decisions in Federal UC Programs

Comments:

Signature of Designated Official	Typed Name and Title	Date

OMB No.: 1205-0222 **OMB Expiration Date:** 05/31/2016 **Estimated Average Response Time:** 15 minutes per response
These reporting instructions have been approved under the Paperwork reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a valid OMB control number. Public reporting burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submission is required to obtain or retain benefits under PL 74-271 Sec. 303(a)(6). Respondents have no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Workforce Security, Room S-4231, 200 Constitution Ave., NW, Washington, DC, 20210.

ETA-MA 8-7
Rev. 2004
Prev. versions usable

Instructions for Completing the Form MA 8-7

1. Material to be Submitted.

a. Statutory Material – Proposed and Enacted Legislation. Amendments pertaining to the establishment and operation of the UC law and UC program are required to be submitted. For purposes of conformity, the state’s UC law includes statutes that affect the administration and the interpretation of the state’s UC law, even though the statute may not be part of the state’s UC code. For example, if an amendment made to a state law other than the UC code classifies a worker as an employee or independent contractor for UC purposes, the legislation is part of the state’s UC law and must be submitted for review.

Submitting proposed legislation assists the Department in providing early assistance to the states in identifying and preventing issues. States should submit proposed legislation as soon as it becomes available and provide comment on the proposal’s chance for passage with a request for an expedited review and comment, if appropriate.

Exception: Introduced and enacted state legislation are available to the Department through an automated legislative reporting service for all states except Puerto Rico and the Virgin Islands. States with information that is made available through this reporting service are not required to submit introduced and enacted legislation, although states are encouraged to advise the Department as soon as possible of bills likely to be enacted. Note this exception does not pertain to amendments to a bill after it has been introduced. These amendments must be submitted.

b. Rules and Regulations – Proposed and Final. All proposed and final rules and regulations that implement or interpret the UC law or other laws affecting the UC program must be submitted. These rules and regulations may pertain to matters such as covered employment, employer records and required reports, contributions, benefit eligibility and interpretation, and claims filing and processing.

As in the case of statutory amendments, submitting proposed rules for Departmental review assures any problems are identified and resolved early in the rulemaking process.

Exception: As is the case with state legislation, proposed and final rules are generally available to the Department through an automated legislative reporting service for all states except Puerto Rico and the Virgin Islands. States with information that is made available through this reporting service are not required to submit proposed and final rules.

c. Official Interpretations. All official interpretations of any provision of the UC law made by representatives of the state agency or other state agency must be submitted for review. These include administrative policy statements concerning the interpretation of any

provision of the UC law, which may include guidance to field staff, any letters giving opinions on questions of general application of the provision of state laws or regulations to third parties, as well as all opinions of the state Attorney General expressing the official interpretation of any state UC statute, amendment or regulation.

d. Decisions and Orders Issued by State Courts, including Material Related to Consent Orders. All decisions and orders issued by state courts involving UC benefits and taxes must be submitted for review to ensure that interpretation of state law does not conflict with Federal law. Copies of the administrative decision reviewed are to be included in the submission. All court cases should be submitted, even if the state determines these are not precedent-setting.

States are also to submit proposed consent orders. As in the case of proposed laws and regulations, reviewing these proposed orders allows the Department to identify and assist in resolving any issues under Federal law.

Exception: States should not submit decisions or orders that are issued without an opinion or analysis. These include cases where a court dismisses an appeal for a party's failure to pursue the case or affirms an administrative ruling without decision.

Federal court matters are not covered under this submittal requirement as they pertain to Federal interpretations of Federal law. States should immediately advise the Department when a matter involving Federal UC law, including the conformity provisions of FUTA and the SSA, reaches Federal court so that the Department may determine whether Federal participation in the case is desirable or necessary.

e. Precedential Administrative Decisions. The decisions issued by the first and second level appeals authorities that are considered precedent-setting must be submitted so that the Department may ascertain whether the interpretation of state law is consistent with Federal UC law.

f. Appellate Decisions in Federal UC programs. Decisions pertaining to the UCFE, UCX, and TAA/TRA programs that are based on an interpretation of the Federal laws or regulations must be submitted; decisions based on state law need not be submitted. For example, a state need not submit a decision applying a state law's "able and available" provisions pertaining to these programs.

It is expected that very few UCFE and UCX decisions will be submitted since most issues that are adjudicated for UCFE/UCX benefits are based on the states' UI laws, including separation issues for UCFE; states do not adjudicate separations from military service for UCX claims.

When it is appropriate to submit a decision based on an interpretation of Federal laws or regulations, in all cases where second level decisions are submitted, include the lower authority decision that was reviewed.

Note: Disaster Unemployment Assistance (DUA) appeals material should not be submitted using the MA 8-7. The state agencies are to submit a copy of any appeal decision issued to the appropriate Regional Administrator (RA). The RA will then submit these appeal decisions as appropriate to the National Office. See 20 CFR 625.10(b)(2).

The Department reserves the right to obtain additional information, as needed, for these Federal UC programs.

2. Submission Requirements.

- a. Use of separate forms. To assure that information related to Federal UC programs (UCFE, UCX, and TAA/TRA) is properly routed, material relating to these programs should not be included with material relating to the administration of the state's law. Otherwise, material may be bundled together.
- b. Fill out the Form MA 8-7 completely. Fill in the "From" section of the form, identify the type of material that is being submitted, and sign the form. If appropriate, briefly describe the material in the comments section of the form.
- c. Time frame for Submission. The MA 8-7 is not required to be submitted on a specific time frame. Instead, it is to be used only when the state has material to submit. However, states should submit material promptly to allow for Departmental review prior to the expiration of time frames for appeal or legislative action.
- d. Address. The address for submittal is preprinted on the MA 8-7 as follows:

U.S. Department of Labor
Employment and Training Administration
Office of Workforce Security
Room S-4231
200 Constitution Avenue N.W.
Washington, DC 20210