

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI/EUC
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 30-13

TO: STATE WORKFORCE AGENCIES

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

SUBJECT: Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2014

1. **Purpose.** To provide information to State Workforce Agencies (SWAs) about the potential for sequestration in Fiscal Year (FY) 2014 and how the Department of Labor (Department) would apply sequestration to mandatory Unemployment Insurance (UI) programs for FY 2014, so that SWAs can make necessary operational changes.

2. **References.**

- Federal-State Extended Unemployment Compensation Act of 1970 (Federal-State EUCA) (Pub. L. 91-373);
- Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) (Pub. L. 99-177), as amended by the Budget Control Act;
- 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, *Supplemental Appropriation Act, 2008, Title IV – Emergency Unemployment Compensation*;
- UIPL No. 04-10, Change 3, dated July 23, 2010, *Emergency Unemployment Compensation Program Extension and Modification, Extended Benefits Temporary Provisions Extension, and Expiration of Federal Additional Compensation*, and Change 9, dated March 5, 2012, *Extension and Modification of Emergency Unemployment Compensation, 2008 (EUC08) and Extension of Temporary Extended Benefits (EB) Provisions*;
- UIPL No. 13-13, dated March 8, 2013, *Implementation of Sequestration under the Budget Control Act of 2011 for the Unemployment Insurance Programs for Fiscal Year 2013*, and Change 1, dated April 9, 2013;

RESCISSIONS None	EXPIRATION DATE Continuing
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- UIPL No. 15-13, dated March 29, 2013, *Unemployment Insurance (UI) Supplemental Funding Opportunity to Fund Costs Attributable to the Implementation of the Sequestration Impacts on the Emergency Unemployment Compensation (EUC) Program*;
- UIPL No. 27-13, dated September 9, 2013, *Unemployment Insurance (UI) Supplemental Funding Opportunity to Fund Costs Attributable to the Implementation of the Sequestration Impacts on the Emergency Unemployment Compensation (EUC) Program in Fiscal Year (FY) 2014*;
- Office of Management and Budget (OMB) Sequestration Preview Report to the President and Congress for Fiscal Year 2014 and OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2014 (April 10, 2013) (Corrected Version—May 20, 2013); and
- OMB Sequestration Update Report to the President and Congress for Fiscal Year 2014, dated August 20, 2013.

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 reduced the deficit by at least \$1.2 trillion over 10 years. Since no such action occurred, the President (after the ATRA delayed the sequestration implementation date) issued a sequestration order on March 1, 2013, which implemented sequestration for FY 2013. Because no changes to the requirements of the BBEDCA for FY 2014 have yet been made, it is prudent to proceed with planning for sequestration in FY 2014.

The Administration has presented a comprehensive deficit reduction plan that would eliminate sequestration, and hopes that Congress will act on it to avert sequestration for FY 2014 and beyond. However, unless Congress acts soon, a 7.2 percentage reduction in non-exempt mandatory programs will go into effect on October 1, 2013, for FY 2014 (as set out in the May 20, 2013, OMB Sequestration Preview Report). The percentage reductions applicable to discretionary programs, projects, and activities (PPAs) have not yet been determined and would be applied later in FY 2014. If Congress does not void sequestration, additional guidance will be issued in early 2014 on the FY 2014 sequestration for discretionary PPAs for the UI program.

4. **Impact of Sequestration on the Mandatory UI Programs in FY 2014.** Below is a list of PPAs related to the mandatory UI programs and the applicability of sequestration to each PPA. This UIPL does not address the effects of sequestration on discretionary UI programs, since if any sequestration of discretionary funds were to take effect, it would not be until later in the fiscal year, per the terms of the BCA.

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-Servicemembers (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: 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 mandatory PPAs:

- 1) Emergency Unemployment Compensation (EUC) benefits and administrative funding and the Federal share of Extended Benefits (EB);
- 2) EUC-related Reemployment Services and Reemployment and Eligibility Assessments (RES/REAs);
- 3) Federal reimbursement of state STC benefit costs authorized in section 2162 of Pub. L. 112-96; and
- 4) Federal share of benefit costs under state STC agreements authorized in section 2163 of Pub. L. 112-96.
- 5) Trade Adjustment Assistance funds appropriated under the Federal Unemployment Benefits and Allowances Account (FUBA)

- 5. Impact of Sequestration on EUC.** The EUC funding for both benefits and administration is subject to sequestration reductions of 7.2 percent for FY 2014. The EUC program is scheduled to expire December 31, 2013. The Department has determined that the FY 2014 reductions will be applicable to benefits paid beginning with the week ending October 5, 2013, and continuing through the week ending December 28, 2013.

Due to the extraordinary programming challenges states experienced during sequestration implementation for FY 2013, and the additional challenges presented by the further changes necessary for sequestration implementation for FY 2014, the Department has reached out to states with various options that may be used in order to achieve the required FY 2014 sequestration savings. Letters have been sent to each state approving the implementation strategy agreed upon by the Department and the state in advance of further specific guidance in this UIPL.

EUC Administration

EUC administration is funded quarterly along with above-base workload for regular UI. The sequestration reduction of 7.2 percent would be applied to above-base funds provided to the states for administration of EUC during the first quarter of FY 2014. The 6.9 percent reduction specified in UIPL No. 13-13 would be applied to EUC administrative funding for workloads processed through the fourth quarter of FY 2013. In addition, states were provided the opportunity to request supplemental EUC administrative funding during the fourth quarter of FY 2013 to implement the required sequestration to EUC benefits in FY 2014 in UIPL No. 27-13.

Calculation of EUC Benefit Reduction

The EUC benefit reduction would be 7.2 percent for the first quarter of FY 2014. The Department conferred with states to determine the best way to achieve the required savings given the complexities and challenges of making the required changes to their systems on a state-by-state basis and, as noted above, confirmed the agreed-upon strategies in letters to the states.

EUC Option

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

Notifications to EUC Recipients

States must notify affected EUC claimants of the potential FY 2014 EUC payment reductions as outlined in the letters they received regarding agreed upon strategies.

Where necessary, 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. States should refer to the option letter they received for sample language related to the implementation option they will be using.

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

In the event that the state must recalculate 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 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, maximum benefit amount (MBA), or remaining entitlement was correctly calculated. Individuals may also appeal, and the appellate authority may 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 September 29, 2013, and through weeks ending December 28, 2013, the \$85 per RES/REA provided to fund these activities would be reduced by 7.2 percent. States withdrawing funds from the Payment Management System for RES/REA activities accomplished during that time period may only withdraw \$78.88 for each completed or substantially completed RES/REAs.

EUC Overpayments Due to Sequestration

Some EUC overpayments may result from 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 SWA 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 7.2 percent for weeks of unemployment ending on or after October 5, 2013, and ending with weeks of unemployment ending on September 27, 2014. Absent sequestration, the Federal share of EB is 100 percent for weeks of unemployment beginning before December 31, 2013. After December 31, 2013, the Federal share of EB returns to 50 percent for weeks of unemployment for the remainder of FY 2014. 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 7.2 percent reduction.

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

Under the Federal-State 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), Federal-State 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.”

State law must 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 reductions in EB remaining entitlement and MBA if it provides for reducing EB WBAs.

Any state amending its law to provide for these EB reductions must provide notice to claimants and an opportunity to appeal the calculation of the amounts.

- 7. Reporting Weekly UCFE Claims in STC Programs.** States use the Employment and Training Administration (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, 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 report, 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, information on the

ETA 538 report 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 Approval No. 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 being reported.

- 8. Impact of Sequestration on TAA.** 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 would not be reduced for purposes of sequestration for FY 2014. The Department would apply the full 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.
- 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.