

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL OUI/DFAS
	DATE October 15, 2014

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 2-15

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 2015

1. **Purpose.** To provide information to State Workforce Agencies (SWAs) about sequestration in Fiscal Year (FY) 2015 and how the Department of Labor (Department) would apply sequestration to mandatory Unemployment Insurance (UI) programs for FY 2015.

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. 22-12, dated June 18, 2012, *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*;
- 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*;
- UIPL No. 30-13, dated September 27, 2013, *Implementation of Sequestration under the Budget Control Act of 2011 for Mandatory Unemployment Insurance Programs for Fiscal Year 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);
- OMB Sequestration Update Report to the President and Congress for Fiscal Year 2014, dated August 20, 2013; and
- OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2015, dated March 10, 2014.

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. Because no changes to the requirements of the BBEDCA for FY 2015 have yet been made and the sequestration order has been issued, it is prudent to proceed with planning for sequestration in FY 2015.

A 7.3 percent reduction in non-exempt mandatory programs went into effect on October 1, 2014, for FY 2015 (as set out in the March 10, 2014, OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2015). As stated in the OMB report, there are no sequestration reductions applicable to discretionary programs, projects, and activities (PPAs) for FY 2015.

4. **Impact of Sequestration on the Mandatory UI Programs in FY 2015.** Below is a list of PPAs related to the mandatory 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-Servicemembers (UCX); and
- 4) Short-Time Compensation (STC) grant funds authorized in section 2164 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) The Federal share of Extended Benefits (EB);
- 2) Federal reimbursement of state STC benefit costs authorized in section 2162 of Pub. L. 112-96; and
- 3) Trade Adjustment Assistance funds appropriated under the Federal Unemployment Benefits and Allowances Account (FUBA)

- 5. Impact of Sequestration on EB.** The applicable percentage reduction to the Federal share of EB benefit costs is 7.3 percent starting with weeks of unemployment ending on October 4, 2014, and ending with weeks of unemployment ending on September 26, 2015. 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 7.3 percent reduction.

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

Under the Federal-State EUCA, the EB weekly benefit amount (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 the 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 the BBEDCA. Note that actual reductions in Federal spending could not be achieved if WBAs are reduced without also reducing individuals’ remaining entitlement or maximum benefit amount (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 but not to appeal the reduction itself.

6. Impact of Sequestration on the Federal Reimbursement of State STC Benefit Costs.

State law may provide for noncharging of STC benefits when reimbursement is provided by the Federal government. As discussed in UIPL 22-12, any amount not reimbursed by the Federal government must be charged to the experience rating account of the employer (or billed to the reimbursing employer.) UIPL 13-13 advised states that STC reimbursements are subject to sequestration, therefore any STC benefits not reimbursed as a result of sequestration must be charged in the same manner as regular UC.

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 UI, UCFE, UCX, and STC/Workshare. States are currently directed to report UCFE, UCX and STC/Workshare activity in the specific cells designated for those programs. In cases where SWAs approve Federal agencies' STC/Workshare plans (in states that operate STC programs) any resulting STC activity 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:

- State UI WSIC: Workshare Initial Claims
- State UI WSEIC: Workshare Equivalent Initial Claims
- State UI WSCW: Workshare Continued Weeks
- State UI WSECW: Workshare Equivalent Continued Weeks
- UCFE WSIC: Workshare Initial Claims
- UCFE WSEIC: Workshare Equivalent Initial Claims
- UCFE WSCW: Workshare Continued Weeks
- UCFE WSECW: Workshare Equivalent Continued Weeks
- UCX WSIC: Workshare Initial Claims
- UCX WSEIC: Workshare Equivalent Initial Claims
- UCX WSCW: Workshare Continued Weeks
- UCX WSECW: Workshare Equivalent Continued Weeks

The sum of the State UI, UCFE and UCX STC/Workshare claims activity reported in the comments section should equal the aggregate STC/Workshare claims reported on the corresponding cell in the ETA 539 report.

States do not need to make changes to their methods for preparing the ETA 538 report. STC/Workshare claims should be excluded from this report. The ETA 539 is an approved information collection (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 will not be reduced for purposes of sequestration for FY 2015. Using flexibility provided under the BBEDCA, the Department will 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.