

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION UC Incentive Payments
	CORRESPONDENCE SYMBOL OUI/DL
	DATE November 30, 2009

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER No. 14-09, Change 3

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Special Transfers for Unemployment Compensation Modernization and Administration and Relief from Interest on Advances

1. Purpose. To advise states of an amendment relating to unemployment compensation (UC) modernization incentive payments.

2. References. The Worker, Homeownership, and Business Assistance Act of 2009, Public Law No. 111-92, enacted November 6, 2009; the Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of Public Law No. 111-5, enacted February 17, 2009; the Social Security Act (SSA); and Unemployment Insurance Program Letters (UIPLs) No. 14-09 and No. 14-09, Changes 1 and 2.

3. Background. UIPL No. 14-09 and UIPL No. 14-09, Change 1, provided guidance to states on how to qualify for UC modernization incentive payments. Public Law No. 111-92 amended the qualifying requirements for the two-thirds incentive payment pertaining to separations from employment due to compelling family reasons. Specifically, it:

- Added an additional option for qualifying for incentive payments. This option pertains to individuals who separate from employment to escape sexual assault.
- Added an additional requirement for qualifying for incentive payments under the new sexual assault option, as well as under the existing domestic violence option. Any amendment to state law made in order to qualify under these two options “shall not supercede [sic] any other provision” that provided “broader access” to UC.

RESCISSIONS None	EXPIRATION DATE Continuing
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These amendments are effective for state applications submitted on and after January 1, 2010.

Attachment I, using a Question and Answer (Q&A) format, provides more information on these amendments and their effect on the application procedure.

4. Office of Management and Budget (OMB) Paperwork Reduction Act. There are no forms associated with OMB Control Number 1205-0470; however, this UIPL allows for an additional category under which states may apply for UC modernization incentive payments. ETA was granted OMB clearance on November 17, 2009, through the Paperwork Reduction Act process for this control number to account for the additional category under which states may submit applications.

5. Action. State administrators should distribute this advisory to appropriate staff.

6. Inquiries. Questions should be addressed to your Regional Office.

7. Attachments.

Attachment I – Questions and Answers

Attachment II – Text of Amendments to UC Modernization Incentive Payment Provisions made by Public Law No. 111-92

Questions and Answers

IN GENERAL

CH 4-1. Question. How did the amendments made by Public Law No. 111-92 change the provisions related to UC modernization incentive payments?

Answer: The amendments made two changes to the qualifying requirements for the two-thirds incentive payment. Both relate to applications submitted under the provisions governing separations for compelling family reasons.

- First, it provides an additional option for qualifying for the two-thirds incentive payment. Under prior law, if a state used the “compelling family reason” option to qualify, its law was required to provide that an individual will not be disqualified for separating from employment under specific circumstances relating to (1) domestic violence, (2) the illness or disability of a family member, and (3) the need for the individual to accompany his/her spouse to a place of new employment. (See UIPL No. 14-09, Attachment III, Q&A III-9.) The amendment adds an option allowing a state to qualify using a provision pertaining to sexual assault in lieu of, or in addition to, a provision pertaining to domestic violence.
- Second, it provides that, if a state selects either the domestic violence or the sexual assault provision (or both), any “resulting change in the State law shall not supercede [*sic*] any other provision of law relating to unemployment insurance to the extent that such other provision provides broader access to unemployment benefits for victims of such selected offense or offenses.”

NEW OPTION RELATED TO VICTIMS OF SEXUAL ASSAULT

CH 4-2. Question. What is the new option for victims of sexual assault?

Answer: To qualify using this new provision, the state law must provide that an individual will not be disqualified for separating from employment due to sexual assault (verified by such reasonable and confidential documentation as the state law may require) which causes the individual reasonably to believe that the individual’s continued employment would jeopardize the safety of the individual or of any member of the individual’s immediate family (as defined by the U.S. Department of Labor (Department)). This option is available for applications submitted on and after January 1, 2010. (See Q&A CH 4-8 below for more information on when an application is deemed to be “submitted.”)

CH 4-3. Question. For purposes of the provision related to victims of sexual assault, what is meant by “verified by such reasonable and confidential documentation as the state law may require?”

Answer: This language has the same meaning as for the domestic violence provision. See Q&A III-11 in Attachment III to UIPL No. 14-09.

CH 4-4. Question. For purposes of the provision related to victims of sexual assault, what is meant by “immediate family member?”

Answer: This language has the same meaning as the language pertaining to domestic violence. See Q&A III-12 in Attachment III to UIPL No. 14-09.

CH 4-5. Question. What is the definition of “sexual assault” for purposes of qualifying for an incentive payment?

Answer: As was the case with the provision relating to victims of domestic violence, the Department is not providing an explicit definition of “sexual assault.” States are to apply their own provisions relating to sexual assault. Since UC laws generally do not address sexual assault, it is recommended that states draft their laws to reference the provisions of the criminal code pertaining to sexual assault.

CH 4-6. Question. May a state submit an application using the provisions relating to both victims of domestic violence and victims of sexual assault?

Answer: Yes. The Department recommends that states write their UC laws to apply to victims of *both* domestic violence and sexual assault. Both provisions have in common that they are designed to *not* penalize individuals who leave their jobs or are otherwise separated due to a reasonable belief that continued employment would jeopardize their safety, or the safety of members of their immediate family. The Department encourages equitable treatment for individuals who fear for their safety.

APPLICATIONS

CH 4-7. Question: Are there any changes to the application procedure?

Answer: Yes. If a state application is made under the compelling family reasons provisions for either the domestic violence or sexual assault component, the state must:

- Indicate whether it amended, or otherwise reinterpreted, any provision of state UC law related to domestic violence or sexual assault in order to qualify for an incentive payment. For purposes of this application, the state’s UC law includes any regulations, policy guidance, state agency or attorney general legal opinions, and administrative procedures.

- If the state did amend or reinterpret its law, as described above, it must provide a certification that any such change did not result in any narrowing of access to UC for victims of domestic violence or sexual assault. The application must cite the changed provisions/procedures and provide a basis for the certification that the changes did not result in narrowing of access.

CH 4-8. Question: Is there any exception to this new requirement?

Answer: This new requirement applies to applications submitted *on and after* January 1, 2010. This means that states that submit applications prior to that date are not required to provide the information or certification discussed in the previous Q&A and also cannot qualify based on a sexual assault provision.

For the purposes of applying the effective date of this new requirement, as set forth in Public Law No. 111-92, Sec. 7(b), the date an application is “submitted” will be considered to be the date the application is signed by the appropriate state official.

**Text of Amendments to UC Modernization Incentive
Payment Provisions made by Public Law No. 111-92**

**SEC. 7. EXPANSION OF MODERNIZATION GRANTS FOR UNEMPLOYMENT
RESULTING FROM COMPELLING FAMILY REASON.**

(a) IN GENERAL.—Clause (i) of section 903(f)(3)(B) of the Social Security Act (42 U.S.C. 1103(f)(3)(B)) is amended to read as follows:

“(i) One or both of the following offenses as selected by the State, but in making such selection, the resulting change in the State law shall not supercede any other provision of law relating to unemployment insurance to the extent that such other provision provides broader access to unemployment benefits for victims of such selected offense or offenses:

“(I) Domestic violence, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual’s continued employment would jeopardize the safety of the individual or of any member of the individual’s immediate family (as defined by the Secretary of Labor); and

“(II) Sexual assault, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual’s continued employment would jeopardize the safety of the individual or of any member of the individual’s immediate family (as defined by the Secretary of Labor).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to State applications submitted on and after January 1, 2010.