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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 50-86

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Amendments Made by Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, Which Affect the Federal-State Unemployment Compensation Program

1. **Purpose.** To advise State agencies of the amendments made by Public Law (P.L.) 99-272 to Section 303 of the Social Security Act (SSA), Sections 3304 and 3306 of the Federal Unemployment Tax Act (FUTA), and the Federal Supplemental Compensation Act of 1982 (FSC).
2. **References** Sections 12401, 12402, and 13303 of P.L. 99-272.
3. **Background** The President signed into law on April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), P.L. 99-272. The amendments made by P.L. 99-272 have made several significant changes affecting the unemployment compensation (UC) program which may require changes in State law and will require new agreements with the U.S. Secretary of Labor.

Section 12401 amends Section 303(a)(5), SSA, and Sections 3304(a)(4) and 3306(f), FUTA, to permit recovery of overpayments made under State and Federal UC laws through offset from unemployment benefits payable to an individual under another State's UC law or a Federal UC program in accordance with a new subsection (g) to Section 303, SSA, which provides that:

- (1) a State may deduct overpayments from benefits payable under a UC program of the United States (U.S.) or another State, with the same procedural safeguards for notice and opportunity for a hearing as apply to the deduction of overpayments of UC paid by the State; and
- (2) any State may enter into an agreement with the Secretary of Labor where the State agrees to recover overpayments made under a UC program of the U.S. from benefits payable under the State's UC program,

and the U.S. agrees to allow the State to recover overpayments made under a State UC program from benefits payable under a UC program of the U.S. The reciprocal nature of these parallel provisions is the essence of any such agreement.

These amendments may apply to recoveries made on or after the date of enactment, April 7, 1986, and may apply to overpayments made before, on, or after the date of enactment.

Section 12402 amends FSC by waiving the consecutive weeks requirement for certain individuals to collect the remaining benefits in their FSC accounts under P.L. 99-15, if these individuals were called up for National Guard duty by the Governor in a disaster declared by the President on June 3, 1985. This provision applies only to Pennsylvania and Ohio.

Sections 13001 through 13009 reauthorize the Trade Adjustment Assistance (TAA) Program for workers effective December 18, 1985, and extend the program to September 30, 1991. These sections also make substantial changes to the TAA Program. A separate directive (GAL 7-86) discusses these changes.

Section 13303 amends the FUTA definition of "employment" for three groups of workers. This section:

- (a) Extends for two years, until December 31, 1987, the exemption from "employment" under Section 3306(c)(1)(B), FUTA, of agricultural labor performed by certain nonresident farmworkers admitted to work temporarily under specific provisions of the Immigration and Nationality Act.
- (b) Permanently exempts from "employment" under Section 3306(c)(20), FUTA, remuneration paid after September 19, 1985 for services performed by certain full-time students employed by certain summer camps. Notice that this exemption was not applicable from January 1, 1984 to September 19, 1985.
- (c) Permanently extends the exclusion from "employment" under Section 3306(c)(18), FUTA, remuneration paid after December 31, 1980, for services performed by crews of certain fishing boats.

4. **Action Required** SESAs are requested to notify appropriate staff of these amendments.
5. **Inquiries** Inquiries should be directed to your regional office.
6. **Attachments** [Text, explanation and interpretation of UC amendments](#); and [draft language to implement the provisions of new Section 303\(g\), SSA](#).

TEXT, EXPLANATION AND INTERPRETATION OF UC AMENDMENTS

Made by Public Law 99-272

I. Section 12401. Recovery of Overpayments By a State Under the State's UC Program, a Federal UC Program or a UC Program of Another State.

A. Text of Amendments.

1. Amendment to Section 303(a)(5), SSA:

Provided further. That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g).

2. New Subsection (g) of Section 303, SSA:

(g)(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

(2) Any State may enter into an agreement with the Secretary of Labor under which--

(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered, in accordance with the same procedures as apply under paragraph (1).

(3) For purposes of this subsection, "unemployment benefits" means unemployment compensation, trade adjustment allowances, and other unemployment assistance.

3. Companion Amendment to Section 3304(a)(4), FUTA:

(D) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act.

4. Companion Amendment to Section 3306(f), FUTA:

(3) amounts may be deducted from unemployment benefits and used to repay

overpayments as provided in section 303(g) of the Social Security Act.

3. Discussion. Section 12401 of COBRA amends the law to allow withholding of UC to recover overpayments among the various State and Federal UC programs. States are permitted to withhold benefits payable under the State UC programs to recover overpayments of benefits made to an individual by other States and under any Federal UC programs. In addition, an overpayment of State benefits may be recovered from Federal UC programs if the State has entered into a reciprocal agreement under which it will recover overpayments of Federal UC benefits from State UC benefits. Formal written agreements between the State and the Secretary of Labor are required to implement the offset of benefits among the Federal and State UC programs. Implementation of these provisions is optional for each State.

Section 12401 allows three types of offset under the new subsection (g) of Section 303, SSA. The three types are defined below:

1. Interstate Offset means:

- a. the withholding of State UC benefits payable by State A to recover an overpayment made by State B under its State UC program, and
- b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program.

2. Intrastate Cross-Program Offset means:

- a. the withholding of State UC benefits payable by State A to recover an overpayment made by State A under a Federal UC program, and
- b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State A under its State UC program.

Note that the authority for withholding of UC benefits under one Federal program payable by State A to recover an overpayment made by State A under the same or a different Federal program continues in effect under previously existing statutory authority.

3. Interstate Cross-Program Offset means:

- a. the withholding of State UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program, and
- b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under its State UC program.

Procedures, requirements and guidance for the implementation of these three types of offsets are discussed further in this Attachment.

Federal benefit programs covered by this amendment are UCFE, UCX, TAA, DUA, REPP, FSC, and any future UC programs, and will be specifically listed in the written agreements.

The collection of TAA non-fraud overpayments cannot be made until waiver guidelines are published in final regulations to satisfy the court order (Civil Action No. 82-3137) issued on January 17, 1983, by the U.S. District Court for the District of Columbia. These regulations containing the waiver guidelines have not been published so TAA non-fraud overpayments cannot at this time be recouped by offset or any other means. However, the court order does

not prevent States from using TAA payments to offset overpayments made under other State and Federal UC programs. Appropriate instructions will be issued after final TAA regulations are published.

4. Implementation of Section 303(g)(1), SSA.

1. Review of State Law. If a State elects to implement this new subsection, it should review its UC law to see if these deductions are allowable. If a legislative change is needed, recommended draft language is contained in Attachment II.
2. Procedural Safeguards. This new subsection of SSA requires that any offset of an overpayment "shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing" as required by a State for the recovery of regular UC payments.
 - a. Requesting State. Before a State may request recoupment, a recoverable overpayment determination must have been issued, in accordance with the Secretary of Labor's Standard for Claims Determination, E.S. Manual, Part V, Sections 6010-6015. The State must notify the recovering State, in writing, of its request for recoupment and certify the balance of outstanding overpayment and should notify the claimant of this request. Although not required, it is recommended that the requesting State periodically notify the claimant as to the amount of the overpayment which has been recouped and the balance remaining.
 - b. Recovering State. The recovering State must follow the same procedures relating to notice to the claimant and opportunity for a hearing as apply under its own State law for the recovery of overpayments of regular UC paid by the recovering State.
3. Guidance for Interstate Offset. This new subsection applies to the offset of any overpayment not previously recovered under the requesting State's law. The State receiving the request for recoupment must apply its own law in offsetting an overpayment to the same extent as provided for the same type (fraud or nonfraud) of intrastate overpayment.
 - a. Interstate Reciprocal Overpayment Recovery Arrangement. The ICESA Interstate Benefit (IB) Committee has under consideration a reciprocal arrangement. This Arrangement will facilitate implementation of interstate overpayment recovery.
 - b. Interstate Request for Recoupment. A form to be used by the requesting State has been drafted and is before the IB Committee for approval. Once issued this form should be used by all States.
 - c. Notice of Recoupment. Recovering States should individually develop a notice that must include at a minimum the following information:
 - 1) the statutory authority for the offset and the name of the State requesting recoupment;
 - 2) the amount of outstanding balance certified by the requesting State;
 - 3) the date of the original notice of determination of overpayment;
 - 4) type of overpayment (fraud or nonfraud);
 - 5) program type (UI, UCFE, UCX, etc.);
 - 6) the amount to be offset weekly; and

7) the right to request redetermination and appeal.

Claimant's right of appeal. should be limited to the recovering State's authority to offset and the amount of the weekly offset. Claimants should be informed that any issue concerning the correctness or validity of the requesting State's overpayment determination should be addressed to the requesting State.

- d. Interstate Overpayment Recovery Handbook. States should review and update the information provided in the Handbook as appropriate.

Additional information concerning interstate recoupment will be provided after further consultation with the IB Committee.

5. Implementation of Section 303(g)(2), SSA.

1. Requirement for Cross-Program Offset of Benefits. Section 303(g)(2) sets the conditions for implementing the intrastate and interstate cross-program offset. Section 303(g)(2) requires each State which elects to implement the cross-program offset to enter into a reciprocal agreement with the Secretary of Labor. Under such agreement the State agrees to recover overpayments made under a UC program of the U.S., which is administered by the State under an agreement with the Secretary of Labor, from benefits payable under the State UC program. The U.S. agrees to allow the State to recover overpayments made under a State UC program from benefits payable under a UC program of the U.S., which is administered by the State under an agreement with the Secretary of Labor. The agreement will also permit the State to implement the interstate cross-program offset if it is participating in the Section 303(g)(1) program.

As with the implementation of Section 303(g)(1) a State should review the UC law to determine if such cross-program offsets are authorized by its law. The draft language recommended in Attachment II would also allow intrastate and interstate cross-program offset of unemployment benefits to be made if a State enters into a reciprocal agreement with the Secretary of Labor and participate in the section 303(g)(1) program.

2. Agreements. ETA is preparing agreements to implement section 303(g)(2), SSA. Two copies of the agreement will be sent to the Governor of each State. If a State wishes to enter into this reciprocal agreement for the recovery of overpayments, both copies should be signed by the Governor or other State official on behalf of the State. One copy should be retained by the State, and the other copy returned to the Unemployment Insurance Service, Attention: Carolyn M. Golding, Director.
3. Allowable Deductions under Agreements. If a State enters into a reciprocal agreement with the Secretary of Labor, it may deduct from Federal unemployment benefits an overpayment previously made to the claimant under the State's UC program. The State also agrees to deduct from regular, extended, and additional UC benefits an overpayment previously made to the claimant under a Federal unemployment benefit program. The Federal benefits applicable under a 303(g)(2) agreement will be listed in the agreement.

This new subsection also permits interstate cross-program offset, but only if the two States involved have a Section 303(g)(2) agreement with the Secretary of Labor and participate in the 303(g)(1) program.

4. Priorities of Overpayments. When a State receives a request for recoupment from more than one State, it is recommended that, after any intrastate overpayments have been satisfied, the oldest overpayment determination be given first priority. This, however, does not apply when there is an overpayment outstanding in a transferring State participating in a Combined-Wage

Claim, since 20 CFR 616.8(e) gives priority to a transferring State when overpayments are recovered through a Combined-Wage Claim.

6. Action Required. The States are encouraged to implement the provisions of this new section of SSA. These procedures allow the States a viable method for recoupment of overpayments that might not otherwise be collected.
7. Effective Date. Section 303(g), SSA, is effective for recoveries made on or after April 7, 1986, and may apply with respect to overpayments made before, on, or after such date.

B. Section 12402. Supplemental Unemployment Compensation for Certain Individuals.

A. Text of Provision:

(a) IN GENERAL.--If--

(1) an individual was receiving Federal supplemental compensation for the week which includes March 31, 1985, or a series of consecutive weeks which began with such week, and

(2) such individual did not meet the consecutive-week eligibility requirements of the Federal Supplemental Compensation Act of 1982 during any period of 1 or more subsequent weeks by reason of performing temporary disaster services described in subsection (e), weeks in such period shall be disregarded for purposes of the consecutive week requirement of section 602(f)(2)(B) of such Act, and, notwithstanding the requirements of State law relating to the availability for work, the active search for work, or the refusal to accept work, such individual shall be entitled to payment of Federal supplemental compensation for each week of unemployment which is described in subsection (b) and for which a certification of unemployment is made by such individual in accordance with subsection (c).

(b) WEEKS FOR WHICH PAYMENT SHALL BE MADE.--A week of unemployment for which payment shall be made under subsection (a) is a week which occurred during the period which commences with the first week beginning after the close of the period described in subsection (a)(2) and ends with the beginning of the first week in which the individual was employed after the close of such period.

(c) CERTIFICATION.--The certification of unemployment referred to in subsection (a) shall be a certification--

(1) that is made on a form provided by the State agency concerned and signed by the individual; and

(2) that identifies the weeks of unemployment for which the individual is making the certification.

(d) LIMITATION ON AMOUNT OF PAYMENT.--In no case may the total amount paid to an individual under subsection (a) exceed the amount remaining in the account established for such individual under section 602(e) of the Federal Supplemental Compensation Act of 1982 after payments were made from such account for weeks of unemployment beginning before the period described in subsection (a)(2).

(e) DEFINITION.--For purposes of subsection (a), the term "temporary disaster services" means services performed as a member of the National Guard after being called up by the Governor of a State to perform services related to a major disaster that was declared on June 3,

1985, by the President of the United States under the Disaster Relief Act of 1974.

(f) **MODIFICATION OF AGREEMENT.**--(1) The Secretary of Labor shall, at the earliest possible date after the date of the enactment of this Act, propose to any State concerned a modification of the agreement that the Secretary has with such State under section 602 of the Federal Supplemental Compensation Act of 1982 in order to carry out this section.

(2) Pending modification of the agreement, the State may make payment in accordance with the provisions of this section and shall be reimbursed in accordance with the provisions of section 604(a) of the Federal Supplemental Compensation Act of 1982. For purposes of carrying out this paragraph, the term "this subtitle" in such section 604(a) shall include this section.

(g) **EFFECTIVE DATE.**--The provisions of this section shall apply to weeks beginning after March 31, 1985.

- Discussion. The FSC program was due to expire April 6, 1985. Public Law 99-15, enacted April 4, 1985, allowed individuals receiving FSC for the week which included March 31, 1985, to continue receiving the remainder of their benefits, as long as these remaining benefits were collected in consecutive weeks of unemployment. Any interruption of benefits, for whatever reason, ended the FSC benefits.

Section 12402 allows certain individuals in the States of Pennsylvania and Ohio to collect the balance in their FSC account, notwithstanding P.L. 99-15. This Section pertains only to a class of individuals who were on National Guard duty during a major disaster declared by the President on June 3, 1985. There are specific provisions as to who is eligible and as to the conditions for payment of any remaining FSC.

- Procedures for FSC Payments (Ohio and Pennsylvania).
 1. Eligibility for FSC for Weeks Beginning After March 31, 1985. P.L. 99-272 provides for payment of FSC to individuals whose FSC benefit payments were terminated because their FSC claims series were interrupted by their service in the National Guard. It pertains only to individuals who received FSC payments for the weeks which included March 31, 1985, and subsequent, consecutive weeks, until they were called up for duty in the National Guard by their Governor during a major disaster declared by the President on June 3, 1985. This amendment to the FSC Act of 1982 concerns only the States of Ohio and Pennsylvania.
 2. Modification to Agreements. P.L. 99-272 requires a modification of the agreement made under Section 602 of the FSC Act. However, pending modification of this agreement, the two States may make FSC payments to eligible individuals and will be reimbursed under Section 604(a) of the FSC Act of 1982.
 3. Notice to Claimants. The SESA shall identify the FSC claimants affected by the call up of the National Guard and inform each of them in writing that they may be eligible for FSC payments. It is recommended that the States identify the affected claimants by obtaining from the National Guard a list of the Social Security account numbers of the individuals who served during the disaster and crossmatch this list with the FSC claim files.
 4. Limits on FSC Payments. SESAs shall pay FSC to eligible claimants to the extent of the balances in their FSC accounts when their claims were terminated. The FSC payments may be made for weeks of unemployment which begin the first week beginning after the end of the individual's National Guard service during the major disaster declared on

June 3, 1985. A claimant's FSC payments for weeks of unemployment end with the beginning of the first week in which the individual was employed after the end of National Guard service. This means that no FSC payments may be made to any individual for any week of partial unemployment. For each week of FSC claimed, the individuals shall indicate the week ending date of the week of unemployment claimed and certify to their unemployment for each such week by signing forms provided by the State agency.

5. Special Eligibility Rule. Individuals' eligibility for FSC during the period which begins with the first week of unemployment following their National Guard service shall not be limited, reduced, or terminated because of issues regarding State law requirements for active search for work, availability for work or refusals to accept or apply for offers of work.
6. Reporting Procedures. FSC activity may be reported in the comments section of the appropriate report.
7. Reductions--P.L. 99-177. The FSC payments and administrative costs to implement P.L. 99-272 are not subject to reduction under title II of P.L. 99-177.
 - Action Required. This section applies only to the States of Pennsylvania and Ohio.
 - Effective Date. This provision shall apply to weeks beginning after March 31, 1985.

C. Section 13303(a). Extension of the FUTA Exemption of Certain Alien Farmworkers.

A. Text of Amended Paragraph of Section 3306(c)(1)(B):

(B) such labor is not agricultural labor performed before January 1, 1988, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

- B. Discussion. This provision amends Section 3306(c)(1)(B), FUTA, by extending for two years, until December 31, 1987, the FUTA exemption from coverage of farmworkers who are aliens temporarily admitted to the United States to work in agricultural employment pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.

Prior to the amendments made by Section 4 of P.L. 96-84, effective January 1, 1980, service performed by an alien referred to in Section 3306(c)(1)(B), FUTA, was not required to be covered or taken into account in determining the size of a firm under Section 3306(c)(1)(A)(i) and (ii), FUTA. Subsequent amendments by Congress extended until December 31, 1985, the exemption from coverage of agricultural work under section 3306(c)(1)(B), FUTA, but required consideration of such service in determining the size of a firm.

Section 13303(a) of P.L. 99-272 further extends the exemption from coverage of services performed by aliens in agricultural labor until December 31, 1987. It continues to require consideration of such service in determining the size of a firm under Section 3306(c)(1)(A)(i) and (ii), FUTA.

Since the Internal Revenue Service has the primary authority for administration of this provision, it will have the responsibility for interpreting and applying the language of this provision.

- C. Action Required. States have the option of providing a similar exclusion in State law. It is not a Federal requirement for conformity.
- D. Effective Date. This amendment to FUTA became effective upon enactment, April 7, 1986.

D. Section 13303(b). Reinstatement of the FUTA Exemption of Full-Time Students Employed by Summer Camps.

A. Text of Reinstated Paragraph of Section 3306(c)(20):

(20) service performed by a full-time student (as defined in subsection (q)) in the employ of an organized camp--

(A) if such camp--

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 1/3 percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full-time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year.

B. Discussion. Section 276(b) of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 added a new paragraph (20) to Section 3306(c), FUTA, to be applicable to remuneration paid during calendar year 1983 only. Section 13303(b) now amends TEFRA so that Section 3306(c)(20), FUTA, is applicable to remuneration paid after September 19, 1985.

Under Section 3306(c)(20), FUTA, the service of a full-time student (see definition below) who is paid wages for less than 13 calendar weeks after September 19, 1985, in the employ of an organized camp (see definition below) is excluded from coverage under FUTA.

This exclusion applies only to "full-time students" in the employ of an "organized camp" who work "less than 13 calendar weeks." All three conditions must be met for such services to be excluded from coverage under FUTA.

1. "Full-Time Student" is defined by section 3306(q), FUTA:

(q) Full-Time Student.--For purposes of subsection (c)(20), an individual shall be treated as a full-time student for any period--

(1) during which the individual is enrolled as a full-time student at an educational institution, or

(2) which is between academic years or terms if--

(A) the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term, and

(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).

Under this definition, an individual is considered to be a "full-time student" for any period during which the individual is enrolled as a full-time student at an educational institution. Also, an individual is considered to be a "full-time student" between academic years or terms (e.g. summer recess) if the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term, and there is a reasonable

assurance that the individual will return to an educational institution at the beginning of the next academic year or term as a full-time student.

2. "Organized Camp" must meet one of the following requirements contained in Section 3306(c)(20):
 - (a) does not operate more than 7 months in the calendar year and did not operate more than 7 months in the preceding calendar year, or
 - (b) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 1/3 percent of its average gross receipts for the other 6 months in the preceding calendar year.
3. "Less than 13 calendar weeks" means employment in 12 calendar weeks or less. Therefore, a full-time student who worked in the employ of an organized camp in 12 calendar weeks and any additional day(s) beyond that 12 calendar week into a 13th calendar week would not be excluded from FUTA coverage under Section 3306(c)(20).

Since the Internal Revenue Service has the primary authority for administration of this provision, it will have the responsibility for interpreting and applying the language of this provision.

4. Action Required. A State has the option of whether to seek an amendment to State law to provide for a similar exclusion in its law. It is not a Federal requirement for conformity.
 5. Effective Date. This amendment to FUTA became effective upon enactment, April 7, 1986.
- C. Section 13303(c). Permanent Extension of the FUTA Exemption of Certain Services on Fishing Boats.

A. Text of Extended Paragraph of Section 3306(c)(18):

(18) service described in section 3121(b)(20);

- B. Discussion. This provision permanently extends Section 3306(c)(18), FUTA, by excluding from "employment" certain services on fishing boats as described in Section 3121(b)(20) of the Internal Revenue Code (IRC) of 1954.

Section 3121(b)(20) of the IRC (as amended by Section 13303(c)(2)) excludes from employment covered by the Federal Insurance Contributions Act:

(20) service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which--

(A) such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than

one boat) catch of fish or other forms of aquatic animal life, but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

Since the Internal Revenue Service has the primary authority for administration of this provision, it will have the responsibility for interpreting and applying the language of this provision.

- C. Action Required. A State has the option of whether to seek an amendment to State law to provide for a similar exclusion in its law. It is not a Federal requirement for conformity.
- D. Effective Date. This amendment to FUTA became effective upon enactment, April 7, 1986.

RECOMMENDED DRAFT LANGUAGE
TO IMPLEMENT SECTION 303(g)

The recommended draft language is keyed to the Manual of State Employment Security Legislation, Revised September 1950 and later supplementals. It adds a new subsection (f) to section 15.

(Alternative 1)

(f) Notwithstanding any other provision of this chapter, the commissioner may recover an overpayment of benefits paid to any individual under this State or another State law or under an unemployment benefit program of the United States.

(Alternative 2)

(f) Interstate and cross-offset of State and Federal unemployment benefits.--To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other States or the United States Secretary of Labor, or both, whereby, notwithstanding the provisions of subsections (j), (k), or (1) of section 5:

(1) Overpayments of unemployment benefits as determined under section 5(j) shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another State, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other State shall be recovered by offset from unemployment benefits otherwise payable under this Act; and

(2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under this Act or any such federal program, or under the unemployment compensation law of another State or any such federal unemployment benefit or allowance program administered by such other State under an agreement with the United States Secretary of Labor if such other State has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by section 303(g)(2) of the federal Social Security Act, if the United States agrees, as provided in the reciprocal agreement with this State entered into under such section 303(g)(2) of the Social Security Act, that overpayments of unemployment benefits as determined under section 5(j), and overpayments as determined under the unemployment compensation law of another State which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by section 303(g)(2) of the Social Security Act, shall be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this State or such other State under an agreement with the United States Secretary of Labor.