Attachment III

Modernization Incentive Payments
Other Eligibility Provision
Questions and Answers

IN GENERAL

III-1. Question: If my state qualifies for the one-third incentive payment related to its base period provision, what provisions must my law contain to qualify for certification for the remaining two-thirds of its incentive payment?

Answer: In brief, a state law must contain provisions carrying out at least two of the following:

- UC is payable to certain individuals seeking only part-time work.
- An individual is not disqualified from UC for separations due to certain compelling family reasons.
- An additional 26 weeks of UC is paid to exhaustees who are enrolled in and making satisfactory progress in certain training programs.
- Dependents' allowances of at least $15 per dependent per week, subject to a minimum aggregation, are paid to eligible beneficiaries.

PART-TIME WORKERS

III-2. Question: What is the part-time work option?

Answer: State law must provide that an individual will not be denied UC under any provision relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time work as defined by the Secretary of Labor.

The state law may, however, deny benefits if a majority of the weeks of work in the individual's base period do *not* include part-time work. States are not required to have this exception in their laws in order to qualify for the incentive payment under this option. In fact, a state may determine that an individual who has previously worked full time may be eligible for UC even if the individual limits him/herself to seeking part-time work

III-3. Question: For purposes of "seeking only part-time work," how does the Department define "seeking only part-time work"?

Answer: For purposes of the incentive payment, the Department defines "seeking only part-time work" as work meeting any one of the following situations:

- Situations where the individual is willing to work at least 20 hours per week.

- Situations where the individual is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period. For example, if the individual worked 16 hours per week in the base period, the state may require the individual to seek jobs offering at least 16 hours of work. If the individual worked 32 hours per week, the state may require the individual to seek jobs offering at least 32 hours of work.

- Situations where the individual is available for hours that are comparable to the individual's work at the time of the most recent separation from employment. This is similar to the preceding definition except that it allows the state to take into account periods between the end of the base period and the filing of the first claim for UC.

The Department will approve a state's application if the state uses any one of the above definitions. The state may also use a combination of these definitions. For example, a state may define part-time work as work having comparable hours to the individual's work in the base period, except that an individual must be available for at least 20 hours of work per week.

A state may also have a broader definition of part-time work. For example, the state may require the individual to be available for only 10 or more hours per week. Of course, the state may not allow the individual to limit his or her availability to the extent that it constitutes a withdrawal from the labor market. (*See* 20 CFR 604.5(a)(1).)

III-4. Question: My state law provides for payment to individuals seeking part-time work only if they have worked part-time during the entire base period. Would an application containing this limitation be certified?

Answer: No. To qualify for the incentive payment, a state law must permit an individual to seek part-time work, except that the state may deny benefits if a *majority* of weeks of work in the base period do not include part-time work (i.e., were full-time). Requiring part-time work throughout the entire base period is more restrictive than the "majority" standard and would not qualify.

III-5. Question: My state law provides for payment to individuals seeking part-time work only if my agency determines the individual has a legitimate reason to limit employment to part-time work. Would an application containing this limitation be certified?

Answer: No. To qualify for the incentive payment, a state law must permit an individual to seek part-time work, except that the state may deny benefits if a *majority* of weeks of work in the base period do not include part-time work (i.e., were full-time). Requiring agency approval is more restrictive.

III-6. Question: My state law provides for payment to individuals who have a history of part-time work. Would an application containing this limitation be certified?

Answer: It depends on how the state interprets and applies this provision. To obtain certification, the state's application must demonstrate that, at a minimum, all individuals who work the majority of weeks in the base period in part-time employment will not be determined ineligible because they are seeking only part-time work.

III-7. Question: My state will use the option that permits us to examine whether the majority of weeks of work in the individual's base period are in part-time work. If the individual worked 40 weeks in the base period and 21 weeks are part-time, must my state's law provide that this individual may limit his/her availability to only part-time work?

Answer: Yes, the state's law must provide that the individual may limit his/her availability to only part-time work under the facts as stated. Since the individual has worked the majority of weeks in the base period in part-time work, this individual must be allowed to seek only part-time work, as defined by the Department. For purposes of this option, a "week of work" is a calendar week.

III-8. Question: My state law requires an individual to be available for the same schedule of work as previously worked. For example, if the individual worked (either part-time or full-time) during specific hours Monday through Friday, the individual will be denied if he or she is not available for the same schedule on these calendar days. Will my state's application be certified if it contains this provision?

Answer: Yes. The Federal requirement is that an individual not be denied "solely because the individual is seeking only part-time work." In this case, the state is placing another, additional test of availability on all individuals seeking work, regardless of whether the work is full-time (as defined under state law) or part-time (as defined consistent with Q&A III-3).

In cases where a test applies only to part-time workers, the Department will evaluate the test to determine if it is consistent with the definition of "seeking suitable part-time work" contained in this UIPL. For example, if a state required that only individuals seeking part-time work be available for the same work schedule, the state's application would be denied since this UIPL does not interpret "suitable part-time work" to include such a requirement. If a state test, although worded in a way that is applicable to both full-time and part-time workers, is in fact applicable only part-time workers, it will be reviewed as described in this paragraph.

QUITS DUE TO COMPELLING FAMILY REASONS

III-9. Question: For purposes of qualifying for the incentive payment, what are "compelling family reasons?"

Answer: To qualify for the incentive payment using the "compelling family reason" option, the state law must provide that an individual will not be disqualified for separating from work under *any and all* of the following circumstances:

- Domestic violence (verified by 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)).

- The illness or disability of a member of the individual's immediate family (as these terms are defined by the Department).

- The need for the individual to accompany his/her spouse: (1) to a place from which it is impractical for such individual to commute; *and* (2) due to a change in location of the spouse's employment.

III-10. Question: An employer discharges an individual for chronic absenteeism that constitutes misconduct under my state's law. Only after the separation does the individual indicate that the absences were to care for a member of his/her immediate family. Would my state's application be denied if individuals in this situation were disqualified under a misconduct separation?

Answer: No. The Federal law provides that an "individual shall not be disqualified from [UC] for separating from employment" for compelling family reasons. In some cases, such as when the individual fails to advise the employer of an absence, the basis for the separation may go beyond "compelling family reasons." That is, misconduct may exist despite the existence of what otherwise would be compelling family reasons, and the state may deny the individual under its misconduct provisions.

To be certified, a state law must reasonably define misconduct. The fact that the employer initiated the discharge does not mean misconduct exists. For example, an individual who is hospitalized as a result of domestic violence may be unable to contact the employer. If the individual is discharged in such cases, the state law, to be certified, must consider the individual to have separated from work due to compelling family reasons. Similarly, if the employer discharges an individual who has informed the employer of expected absences to care for an ill child, the state law must consider the individual to have been separated from work due to compelling family reasons.

Many state misconduct provisions have been interpreted to require a willful and wanton disregard of the employer's interest. The Department anticipates that these state law provisions are generally expected to meet the conditions pertaining to compelling family reasons since separations for compelling family reasons do not in themselves constitute a willful and wanton

disregard of the employer's interest. However, to assure the state's law does not provide for a denial due to misconduct for such separations, the state's application will need to address the application of its misconduct provisions to compelling family reasons.

III-11. Question: For purposes of the domestic violence provision, what is meant by "verified by such reasonable and confidential documentation as the state law may require?"

Answer: As in other UC adjudications, the state must gather sufficient facts to support any eligibility determination, which may include verification of the individual's belief that his/her continued employment would jeopardize the safety of the individual or a member of the immediate family. When the state verifies the individual's belief, the Department has determined the state may reasonably require a statement supporting recent domestic violence from a qualified professional from whom the individual has sought assistance such as a counselor, shelter worker, member of the clergy, attorney, or health worker.

The state must accept any other kind of evidence that reasonably proves domestic violence. The state may accept, but may not require, as evidence (1) an active or recently issued protective or other order documenting domestic violence, or (2) a police record documenting recent domestic violence as doing so will create an unreasonable bar to benefits.

If the state obtains one instance of information that adequately verifies the individual's belief, it would defeat the purpose of the new Federal provisions for the state to burden the individual by requiring additional information. Therefore, any application that indicates that multiple verifications are necessary will not be certified.

At a minimum, for purposes of holding information about domestic violence confidential, the Department's regulations at 20 CFR Part 603 addressing the confidentiality of UC information will apply, as it does to all confidential UC information. Given the sensitivity of the kind of information that may be needed to prove domestic violence, as well as the confidential sources from which it may have to be obtained, the Department views the language about "confidential information" as an authorization to seek information which may come from confidential sources and as a reminder that such information must be kept confidential.

III-12. Question: For purposes of the domestic violence and illness/disability options, what is meant by "immediate family member?"

Answer: At a minimum, a state must include spouses, parents and minor children under the age of 18 in its definition of "immediate family member" for its provision to qualify for certification. States may provide for a more inclusive definition (for example, including grandparents, sisters, brothers, domestic partners, adult children or foster children), but they are not required to do so for their provisions to be certified.

III-13. Question: For purposes of the illness/disability option, what is meant by "illness" and

“disability?”

Answer: “Illness” means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise). Similarly, “disability” means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise) for. “Disability” encompasses all types of disability, including (1) mental and physical disability; (2) permanent and temporary disabilities; and (3) partial and total disabilities. What is key is that the individual’s illness or disability necessitates care by another individual and the employer does not accommodate the employee’s request for time-off.

This is a minimum standard for a state to receive its incentive payment. States may have broader eligibility provisions. However, a state law provision would not be certified if it has a narrower definition of illness or disability or provides for overly restrictive limits on the types of verification of illness. For example, if the state requires a medical doctor to verify an illness or disability when other sources of verification are available, the application would not be accepted. As another example, if a state law’s provisions only apply when the family member is terminally ill, the provision will not be certified.

III-14. Question: My state law pertaining to separations to care for family members is limited to cases where no reasonable, alternative care was available. Would this provision be certified?

Answer: No. The new Federal provisions broadly require, as a condition of certification, that the state law not disqualify an individual separating because of the “illness or disability of a family member . . . .” The Act does not permit a state to limit eligibility to particular circumstances surrounding a separation for this reason. Thus, a provision would not be certified if it applies only when no reasonable, alternative care is available.

III-15. Question: For purposes of quitting to accompany a spouse to a new location from which it is impractical to commute, what is meant by “impractical?”

Answer: What is “impractical” will be based on commuting patterns in the locality. States should assure that their provisions reasonably reflect these commuting patterns.

III-16. Question: My state looks at whether it is impractical for the individual to commute from the new location. We do not examine the reason why the spouse relocated. Would this provision qualify for an incentive payment?

Answer. In this case, the state permits payment of UC in all situations required for the state to qualify for an incentive payment. State law may provide for broader eligibility than required for certification, such as where it is not practical to commute from the new location.

III-17. Question: Do the provisions on compelling family reasons affect my state’s availability

requirements as a condition of claimant eligibility?

Answer: There is no effect. States must continue to require, at a minimum, that individuals be able to and available for work as defined by the Department's regulations at 20 CFR Part 604. The new Federal provisions on compelling family reasons relate only to whether the reason for quitting work is disqualifying, and do not address issues related to the individual's continuing unemployment. Thus, for example, an individual who quits employment for a compelling family reason may not be disqualified for quitting, but the individual will be ineligible if unavailable for work.

TRAINING BENEFITS

III-18. Question: If a state elects the training benefit option, under what conditions must it be payable?

Answer: The state law must provide that a training benefit be payable to any individual who is unemployed (as determined under state law, including partial and part-total unemployment), has exhausted all rights to regular UC, and is enrolled in and making satisfactory progress in either:

- A state-approved training program, or
- A job training program authorized under the Workforce Investment Act of 1998 (WIA).

The state law must provide for payment of the training benefit to individuals who are enrolled in and making satisfactory progress in *both* of the above types of programs. However, the state law is not required to provide for payment of the training benefit to an individual who is receiving "similar stipends" or other training allowances which can be used for non-training costs. (In addition, the state may treat such stipends as disqualifying income.) In this case, "similar stipend" means an amount provided under a program with similar aims, such as providing training to increase employability, and in approximately the same amounts.

WIA or other approved job training programs for which training benefits are paid may be limited to those that prepare an individual for entry into a high-demand occupation if the individual has been:

- Separated from a declining occupation, or
- Involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.

The requirements related to the job training program are *minimum* requirements for purposes of certification. If the state pays training benefits to a broader class of individuals participating in training than specified above, the state will meet the requirements for this option. For example, a

state law may pay additional training benefits to any individual who is preparing for a job in a "demand occupation" as opposed to a "high-demand occupation." However, a state law would not qualify for certification if it limits training benefits to a narrower class of individuals. For example, if the training benefits are payable only to individuals in job training programs leading to high-wage occupations, the state law would not be certified because the Federal provision does not authorize a high-wage restriction.

Whether an occupation is "declining" or "high-demand" will be determined by the state using available labor market information data.

III-19. Question: How must the amount of training benefits be determined for purposes of this option?

Answer: The amount of UC payable for a week of unemployment must, at a minimum, equal the individual's weekly benefit amount (including dependents' allowances) for the most recent benefit year less any deductible income as determined under state law. The total amount of UC payable to any individual must equal at least 26 times the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year.

III-20. Question: What is meant by "state-approved training program"?

Answer: A program that the state determines is reasonably expected to lead to employment in an occupation, including high-demand occupations.

III-21. Question: What evidence may my state require for purposes of determining whether an individual is making satisfactory progress in the training program?

Answer: The state may require reasonable evidence of satisfactory progress, such as reports from training providers and evidence of attending training when attendance is a necessary part of such training.

III-22. Question: My state has a training benefit provision, but amounts must be appropriated each year by the legislature. Will this provision qualify for the incentive payment?

Answer: No. To qualify for an incentive distribution, the state law provision may not be subject to discontinuation. A provision subject to appropriation may be capped with the result that it could be discontinued within the state's fiscal year for which the appropriation is made. Further, there is no guarantee any appropriation will be made for future years.

III-23. Question: May the training benefit be paid after federally-funded extensions of UC?

Answer: Yes. The training benefit may be paid after the individual exhausts eligibility under the current Emergency Unemployment Compensation program or under the permanent federal-

state Extended Benefits program.

III-24. Question. May eligibility for the training benefit be terminated by the expiration of a benefit year, or may it be limited to individuals who have not previously received it?

Answer: No. Federal law does not contain these limitations.

DEPENDENTS' ALLOWANCES

III-25. Question: What is meant by "dependent" for purposes of qualifying for an incentive payment under the option related to dependents' allowances, as well as in other provisions relating to incentive payments?

Answer: The term "dependent" is defined under state law for all of these purposes.

III-26. Question: With respect to the dependents' allowances option, what dollar amounts must be paid as dependents' allowances to qualify for the incentive payment?

Answer: The state must pay an amount equaling at least $15 per dependent per week. However, the state may cap the total allowance paid to an individual for dependents at $50 per week of unemployment or 50 percent of the individual's weekly benefit amount for the benefit year, whichever is less.

The state is not, however, required to pay the full dependents' allowance when the individual has earnings for the week. Instead, the state may provide for a reasonable reduction in the amount of any such allowance for such week. A state law will qualify for certification under this "reasonableness" test if it provides for the same pro rata reduction in the dependents' allowance as was applied to the weekly benefit amount. For example, if the individual is eligible for one-half of the weekly benefit amount, the state may reduce the dependents' allowance by one-half. If a state applies another reduction test that it believes is reasonable, the state's application must explain why the test is reasonable.

III-27. Question: My state does not pay a dependents' allowance if the individual qualifies for the maximum weekly benefit amount. Would my state's dependents' allowances provision qualify?

Answer: No. The new Federal provisions require, as a condition of certification, that a state pay dependents' allowances, but permits some limitation on their aggregation. Because this state provision places an additional limitation on dependents' allowances, the Department would not certify it. Similarly, the Department would not certify a state provision that does not pay dependents' allowances to individuals who qualify for the minimum weekly benefit amount.

REGULAR COMPENSATION

III-28. Question: The options relating to part-time work, compelling family reasons, and dependents' allowances specify that they must be applied to "regular compensation." Does this mean they are not required to be applied to other payments of UC?

Answer: For UC programs where benefits are funded by the Federal government, Federal "equal treatment" requirements apply. Therefore, except where the laws and regulations governing these programs provide otherwise, benefits for the following UC programs must be paid in the same amount, on the same terms, and under the same conditions as regular compensation:

- The permanent federal-state Extended Benefits program.
- The UC programs for former Federal employees and ex-military personnel. Moreover, these programs are also included in the definition of "regular compensation" in Section 205(2) of the Federal-State Extended Unemployment Compensation Act of 1970, as amended.
- The current emergency UC program, commonly called the EUC08 program.
- The Disaster Unemployment Assistance program.
- Trade Readjustment Allowances payable under the Trade Act, as amended.

However, unless a state's law contains an "equal treatment" requirement for "additional compensation," it need not apply the requirements relating to part-time work, compelling family reasons and, with one possible exception for the training benefit (explained in the next paragraph), dependents' allowances in the payment of additional compensation. Additional compensation is not regular compensation, but, rather, compensation totally financed by a state and payable under state law by reason of high unemployment or other special factors. Thus, the limitation to "regular compensation" means, for example, that for a state's provision relating to part-time workers to be certified, the state law need not pay additional compensation to part-time workers.

Note that benefits under the training benefits option are a form of additional compensation. However, as discussed above for the training benefits option, the state must include dependents' allowances in calculating the individual's weekly benefit amount for the training benefit. Those dependents' allowances must be calculated for the training benefit in the same manner as they are calculated for regular compensation. Thus, if a state selects its dependents' allowances provision for certification, it must apply it to the training benefit.

APPLICATIONS FOR INCENTIVE PAYMENTS

III-29. Question: I believe my state law qualifies for an incentive payment under two or more of the above options. What should my application state?

Answer: For each option under which the state is applying, the application must:

- Name the state;
- Cite to and attach the specific provisions of state law supporting the application;
- Certify that the provision of state law is either currently in effect or will become effective for claims filed after a specified date;
- Contain a certification that the provision is permanent (that is, not temporary) and is not subject to discontinuation under any circumstances other than repeal by the legislature; and
- Address how the state intends to use the incentive payment to improve or strengthen its UC program.

The following additional information is also required:

- When an application is based on an interpretation of state law rather than explicit statutory language (as may be the case under the options for part-time workers and compelling family reasons), the state must provide evidence of its interpretation. This evidence may include regulations, court cases, precedent decisions, or administrative procedures. An application that merely asserts a provision of state law is interpreted in a certain way will be deemed incomplete and denied. Similarly, an application that cites to a court case as an authoritative interpretation will be deemed incomplete and denied unless the state provides regulations or procedures demonstrating the court case has been implemented. The application must describe these authorities and attach copies of any relevant material.

- For an application pertaining to compelling family reasons, the state must (1) explain its requirements for verification of domestic violence and why they are reasonable, and (2) describe how the state's misconduct provisions are consistent with Q&A III-10. The application must attach copies of any relevant material supporting the application's statements.

- For an application that provides for a "reasonable reduction" in dependents' allowances for weeks with earnings, describe the reduction and why it is believed to be reasonable.

III-30. Question: My state has submitted an application under the base period provision for the first one-third of its incentive payment. Should we wait until that application is approved prior to submitting an application for the remaining two-thirds?

Answer: No. It is not necessary to wait for approval of the base period application. However, the Department will not certify the state for the remaining two-thirds until it certifies the base period provision.