

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI - STC
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO.

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES
Assistant Secretary

SUBJECT: Layoff Prevention Act of 2012 (P.L. 112-96) Section 2163, Provisions Related to Temporary Financing of Short-Time Compensation (STC) Agreements, Federal STC

1. Purpose. To invite states to enter into an federal-state Agreement with the Secretary of Labor (Secretary) to administer the Federal STC program and provide states with instructions for implementing and operating such program, including fiscal and reporting instructions.

2. References.

- The Layoff Prevention Act of 2012 (Subtitle D of Title II of the Middle Class Tax Relief and Job Creation Act of 2012 P.L. 112-96);
- Section 401 of the Unemployment Compensation Amendments of 1992 (P.L.102-318);
- Section 194 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Public Law (P.L.) 97-248);
- Section 3304(a)(4)(E) of the Federal Unemployment Tax Act (FUTA);
- Section 3303(a)(1), FUTA;
- Section 3304(a)(6)(B), FUTA;
- Section 3306(f)(5), FUTA;
- Section 3309(a)(2), FUTA;
- Section 303(a)(5) of the Social Security Act (SSA);
- Sections 414(i) and (j) of the Internal Revenue Code (IRC);
- Unemployment Insurance Program Letter (UIPL) No. XX-12, *The Layoff Prevention Act of 2012 (P.L. 112-96) – Provisions Relating to Short-time Compensation*;
- UIPL 45-92, *Unemployment Compensation Amendments of 1992 (P.L. 102-318) - Provisions Affecting the Federal-State Unemployment Compensation (UC) Program*;
- Training and Employment Guidance Letter (TEGL) No. 30-09, *Layoff Aversion Definition and the Appropriate Use of Workforce Investment Act Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver*; and
- Training and Employment Notice (TEN) No. XX-12- *Layoff Aversion in the Context of Rapid Response*.

3. Background. The Layoff Prevention Act of 2012 (herein referred to as Subtitle D) amended Federal law to provide a new definition of an STC program. STC is designed to avert layoffs,

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preserve workers' jobs, and retain employer's skilled workforces during times of lowered economic activity in the business cycle of an employer. STC is designed to avert temporary or permanent layoffs of employees in an affected unit of the employer through the reduction of work hours in the unit. This reduction helps employers retain their skilled workforce during the duration of the STC plan while providing an STC benefit to the employees whose hours are being reduced. STC is an effective strategy for layoff aversion.

STC is a voluntary program for employers who want to reduce their employees work hours in lieu of layoffs. The employer submits a plan that provides that employees in the affected unit will have their work week reduced by at least 10 percent and no more than 60 percent, the workers must be available for their regular workweek during each week the plan is operational and must have been otherwise eligible for regular unemployment compensation to receive a STC payment. The STC plan will provide that eligible employees will maintain fringe benefits despite the reduced hours and the plan may provide that workers in the affected unit may participate in employer sponsored or WIA approved training during the plan. The employer must submit a written application to enter into a STC plan to the state agency which will approve the application if the plan is consistent with applicable state and Federal laws.

Subtitle D, section 2163, allows states to participate in a Federal STC program. Federal STC is temporary program that is operated consistent with the definition of an STC plan as defined in section 3306(v) FUTA. The STC payments are made by the state as an agent of the Secretary to administer the program. Federal STC is an opportunity for states to pilot a STC program and determine the feasibility of full implementation. States that choose to operate a Federal STC program must do so in accordance with Departmental guidance and abide by the Agreement (Attachment 2).

In TEGL 30-09, the Department provided a definition of layoff aversion. As noted in that guidance, "ETA considers a layoff averted when: 1) a worker's job is saved with an existing employer that is at risk of downsizing or closing; or 2) a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no or a minimal spell of unemployment." In other words, layoff aversion is preventing or minimizing the duration of unemployment.

Federal/state STC is an effective layoff aversion strategy. We suggest combining the Federal STC with a layoff aversion strategy to enhance a stat's plan to avert layoffs. States should develop a coordinated strategy and conduct consultation with the appropriate partners prior to implementing a STC program. These partners include but are not limited to:

- 1) workforce system partners: Rapid Response, One-Stop Career Centers, Unemployment Insurance, and Business Services;
- 2) employer community: Human Resource Organizations, Employer Third-Party Administrators, Chambers of Commerce, Labor Organizations;
- 3) state-partner agencies: Economic Development Agencies; and
- 4) early warning data resources: banks, claims data, etc.

4. Summary. Subtitle D provides a unique opportunity for states without an existing STC law to provide for the payment of STC. Through a federal-state Agreement, states may administer a Federal STC program for a period of not more than two years and thirteen weeks after the enactment of the Act, February 22, 2012. This STC program would then expire on

May 24, 2014. If a state does not have an existing STC program, a Federal STC program has been made available under Section 2163 that provides temporary Federal financing of 50 percent of the benefit costs to states that enter into an Agreement with the Secretary. Federal STC is available only if states enter into an Agreement with the Secretary to provide for the payment of Federal STC, if such state's law does not provide for the payment of STC as defined in Section 3306(v).

The draft Agreement (Attachment 2) allows the state agency to make payments of Federal STC through a state approved plan initiated by employers who desire to participate.

5. Payments to States.

A. 50 Percent Federal Funding for Federal STC payments

- The Federal government will reimburse states for 50 percent of the Federal STC costs. States may be reimbursed for costs for not more than 104 weeks.
 - Payments made to a state shall be payable by way of reimbursement in such amounts as the Secretary estimates the state will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the state.
 - Reimbursement for benefits will be provided to each eligible state workforce agency via the UI grant process. The Grant Officer will assign a separate line on the UI program notices allowing for issuance of obligational authority for STC benefit funds, and a separate sub-account for STC benefits will be set up in the Payment Management System (PMS) for states to draw down STC benefit funds. This will function identically to the benefit funding for Trade Readjustment Allowances and wage insurance benefits.
 - Note: No payment(s) will be made to states for Federal STC paid to any individual(s) in excess of 26 times the amount of regular compensation (including dependents allowances) and no payment will be made if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.
- If a state participates in Federal STC and subsequently enacts a state law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) FUTA, as added by section 2161(a), the state—
 - shall not be eligible for payments under this section for weeks of unemployment beginning after the effective date of such state law; and
 - subject to paragraphs (1)(B) and (2) of section 2162(b), shall be eligible to receive payments under section 2162 after the effective date of such state law.

B. Associated Administrative Expenses

- Reimbursement of the STC administrative costs will also be provided to each eligible state workforce agencies via the UI grant process. Funding for

implementation costs of the temporary STC program will be made available through the SBR process, which will be announced in future guidance. The ongoing STC administrative costs will be paid for through the UI-3 process based on the workload levels reported on the STC 5159 reports. These workloads will be funded at the same rates as regular UI above-base workloads. As with the STC benefits, the Grant Officer will assign a separate line on the UI program notices allowing for issuance of obligational authority for STC administrative funds, and a separate sub-account for STC administration will be set up in the PMS for states to draw down STC administrative fund

C. STC Benefits and Administrative Fund Accounting

- Because of the separate appropriation for STC benefits and administrative funds, states must track and report STC benefit and administrative obligational authority and expenditures separately. Therefore, states must establish a separate fund ledger and must submit a separate ETA 9130 report for the temporary STC program.

6. Staffing Guidelines. Federal laws and regulations governing UC require that services be administered by government personnel. The merit staff requirement for the UC program is established in the Social Security Act, section 303(a)(1). That section conditions a state's receipt of a UC administrative grant in the state law providing for "...[s]uch methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis...) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." This means that state activities supporting the administration of the UC program that are inherently governmental functions must be merit staffed. The Department enforces this requirement, subject to the personnel standards established by the U.S. Office of Personnel Management (OPM), to which interpretive authority for this requirement was transferred by the Intergovernmental Personnel Act of 1970. OPM extending to states implementing this Federal merit-staffing requirement the general principles developed for the Federal merit staffing system, has determined that state UC activities that are "commercial" in nature need not be merit-staffed, but continued to require that "inherently governmental" functions be performed by state government personnel. (See UIPL No. 12-01, Outsourcing of Unemployment Compensation Administrative Functions, and Change 1 to that UIPL.)

7. Required Reporting. All states that operate STC programs must submit data under existing STC reporting requirements. State reporting for STC includes the following:

- Monthly reporting of claims and payment activities on the workshare specific ETA 5159 (OMB No. 1205-0010).
- Weekly reporting of initial and continuing claims, as well as equivalents on the ETA 539 (OMB No. 1205-0028).
- Monthly reporting of time lapse for first payments on the workshare specific ETA 9050 (OMB No. 1205-0359).
- Monthly reporting of time lapse for continued weeks on the workshare specific ETA 9051 (OMB No. 1205-0359).

PL 112-96 has produced the need for some additional reporting requirements beyond those mentioned above. These additional reporting requirements are detailed in the “Reporting Instructions” of Attachment 1 to this UIPL.

Compliance with Subtitle D will necessitate additional reporting by state agencies on the provisions of the Federal STC program. The Department is in the process of submitting an Information Collection Request (ICR) to OMB requesting changes to existing collections and new collections. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the Paperwork Reduction Act of 1995, and displays a currently valid OMB control number, and the public is not required to respond to a collection unless it displays a currently valid OMB control number (see 44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (see 44 U.S.C. 3512). The Department will notify states of OMB’s decision upon review of the Department’s ICR, including any changes that may result from this review process.

8. Guidance. This document furnishes information about the Federal STC program and provides the Department’s interpretation of Sect. 2163 of the Act. It also sets forth the operating instructions to guide states in implementing and administering the Federal STC program.

The instructions in this document are issued to states as guidance provided by the Department in its role as the principal in the Federal STC program. States, acting as agents of the Secretary, in administering the Federal STC program, must sign an Agreement to operate the program in accordance with the attached operating instructions. Interested states must inquire with the appropriate Regional Office to receive the federal-state Agreement that must be signed by the state administrator to act as an agent of the Secretary to operate a Federal STC program.

9. Action Requested. Administrators are to provide this guidance to the appropriate staff.

10. Inquiries. Questions should be directed to the appropriate Regional Office.

11. Attachments.

Attachment 1—Implementing and Operating Instructions for Federal STC

Attachment 2—Federal-state Agreement (Draft)

Attachment 3—Unemployment Insurance Program FY 2012 Annual Funding Agreement
Addendum (Draft)

Attachment—Subtitle D of the Layoff Prevention Act of 2012, Sec.2163

Attachment 5—STC Questions and Answers

**Attachment 1 to UIPL No.
Implementing and Operating Instructions for Federal Short-Time Compensation (STC)**

Introduction

On February 22, 2012, the President signed Public Law 112-96, the Middle Class Tax Relief and Jobs Creation Act (Act) which included Subtitle D, which may be cited as the Layoff Prevention Act of 2012. Section 2163 of Subtitle D created the Federal STC program. States that choose to participate in a Federal STC program must enter into a federal-state Agreement with the Secretary to operate the program. Per that Agreement, the payment of Federal STC paid to an individual may not exceed 26 times the weekly benefit amount (including dependents' allowances) during the applicable benefit year established. The Federal government will reimburse the states for one-half of the amount of Federal STC paid to individuals. The employer who submits an STC plan, which is approved by the state agency, is required to pay the state the remaining one-half of Federal STC costs. The amounts paid by the employer will be deposited into the state's unemployment trust fund but the amounts paid by the employer will not be used in determining an employer's contribution rates. The Department is issuing this guidance to explain the eligibility requirements, criteria for determining who is eligible, how to establish Federal STC claims, and other administrative functions associated with the Federal STC program.

States may not deviate from the operating instructions without the prior approval of the Department.

Definitions: This section contains the definitions of terms used throughout this document. References are made to Subtitle D and TEGL 30-09.

1. "Act" means the Middle Class Tax Relief and Job Creation Act of 2012.
2. "Affected Unit" means a specified plant, firm, business, department, shift, or other definable unit consisting of at least two employees for which an approved Federal STC designation applies.
3. "Agreement" means the agreement between a state and the Secretary of Labor (the Secretary) under which the agency makes Federal STC payments, as the Department of Labor's (Department) agent, of Federal STC in accordance with Subtitle D as interpreted by the Department as set forth in these instructions or other instructions issued by the Department (Attachment 2).
4. "Applicable STC Benefit Year" means, with respect to an individual, the current benefit year, not in excess of 26 times the amount of regular compensation (including dependents' allowances) of the applicable benefit year under the state law payable to such individual for a week of total unemployment.
Note: An individuals' UC benefit year is not impacted by any Federal STC payment and Subtitle D requires that an individual must be eligible for UC in order to receive Federal STC.
5. "Department" means the U.S. Department of Labor.
6. "Effective Date" means the date of enactment of the Act, February 22, 2012.
7. "Eligible employee" means in general an individual whose hours have been reduced by at least ten percent and not more than 60 percent and is not participating in seasonal, temporary, or intermittent employment.

8. “Eligible employer” means any employer who registered with the state agency is not delinquent in the payment of contributions or reimbursements per the state agency’s requirements.
9. “Federal STC” means the program under a federal-state Agreement as referenced in section 2163 of Subtitle D that allows a state to enter into, and participate in, an Agreement under this section with the Secretary provided that such state’s law does not provide for the payment of STC under a STC program, as defined in section 3306(v) FUTA, as added by section 2161(a).
10. “Federal STC participant” means any individual employed full-time or on a permanent part-time basis by any eligible Federal STC employer.
11. “Federal STC employer” means an employer with an approved Federal STC plan in effect.
12. “Federal STC employer plan” means a plan submitted by an employer where there is a reduction in the number of hours worked by the employees in the affected unit in lieu of layoffs of at least two employees.
13. “Fringe benefits” include but are not limited to health insurance, retirement benefits, paid vacation and holidays, sick leave, and similar advantages which are incidents of employment.
14. “Intermittent employment” means employment that is not continuous but may consist of periodic intervals of weekly work and intervals of no weekly work or as defined by the state agency.
15. “Layoff Aversion” means a layoff is averted when: 1) a worker’s job is saved with an existing employer that is at risk of downsizing or closing; or 2) a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no or a minimal spell of unemployment.
16. “Permanent part-time” means continuous weekly employment which is less than the normal full-time weekly hours of work, as defined by the state.
17. “Rapid Response” means a pro-active, business-focused, and flexible strategy designed to avert and respond to layoffs and plant closings by quickly coordinating services and providing immediate aid to companies and their affected workers, as referenced in WIA Part 665, Statewide WIA Activities Subpart C.
18. “Seasonal employment” means employment with an employer who experiences at least a twenty percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous 3 years as reported to the state agency, and/or employees are hired to work on a temporary basis by employers that need extra help during a particular season, or as defined by the state agency. .
19. “Secretary” means the Secretary of Labor of the United States.
20. “Short-Time Compensation” means a program that conforms with section 3306(v) of FUTA, as defined in UIPL No. XX-12.
21. “State” means the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.
22. “State Agency” means the agency with the authority to administer the unemployment compensation program in the state.
23. “State STC” means those state STC programs that comply with Subtitle D. as defined in section 3306(v) FUTA, as added by section 2161(a)).

24. “State STC weekly benefit amount (WBA)” means as a proportion of the unemployment compensation WBA payable for a week of total unemployment equivalent to the proportion of the workweek that had been reduced.
25. “Subtitle D” means the Layoff Aversion Prevention Act of 2012.
26. “Temporary” mean employment where an employee is expected to remain in a position only a limited period of time and/or is hired by a temporary agency to fill a gap in an employer’s workforce or as defined by the state agency.
27. “Unemployment Compensation” means cash benefits (including dependents’ allowances) payable to individuals with respect to their unemployment, and includes regular compensation.

Operating Instructions:

1. Federal STC Claimant Eligibility.

a. Basic Eligibility Requirements. To be eligible for a week of Federal STC, in addition to meeting applicable state law provisions, individuals must:

1. be eligible for regular UC;
2. be employed full time or be on a permanent part-time employment basis;
3. not be employed by the employer on a seasonal, temporary, or intermittent basis; and
4. meet the availability for work and work search test requirements while collecting Federal STC benefits, by being available for their workweek as required by the state agency; and

Note: the individual may receive the amount of UC payable to such employee by a pro rata portion of the UC which would otherwise be payable to the employee if such employee were unemployed;

b. Individual Entitlements. As participants in the Federal STC program, individuals may:

1. participate, as appropriate, in training (including employer-sponsored training or worker training funding under the Workforce Investment Act (WIA) of 1998) to enhance job skills if such program is approved by the state agency;
2. collect up to 26 times the established weekly benefit amount of Federal STC benefits depending on the Federal STC employer plan;
3. collect regular unemployment benefits for any week in which the employer cannot provide any work; and
4. collect a partial Federal STC benefit payment if he/she has earnings during a Federal STC plan from a non-Federal STC employer.

2. Federal STC Employment Requirements.

a. Basic Eligibility Requirements. To participate in Federal STC, in addition to meeting applicable state law provisions, employers must:

1. be voluntary participants;
2. be reducing the employees number of hours worked in lieu of layoffs;
3. include more than two employees in the Federal STC plan;
4. present a documented plan to the state agency which includes the reasons for the reduction and exact number of weeks of participation (26 weeks times the maximum weekly benefit amount established) and an estimate of the number of layoffs that would have occurred absent the ability to participate in Federal STC;

Note: The state agency may add other requirements to the plan but it must be approved by the Department;

5. comply with employer obligations under Federal and state law;
6. continues full time retirement benefits and provides full insurance and health benefits as if the workers were on a full-time schedule;
7. reduce work hours for not less than 10 percent and no more than 60 percent of the normal weekly hours of work; and
8. contribute one-half the amount of Federal STC paid under the plan and such amount shall be paid into the state's unemployment fund and shall not be used for the purposes of calculating an employer's contribution rate under section 3303 (a) (1) FUTA.

Note: If employers do not reimburse their share of Federal STC costs (50 percent), then the state may terminate the Federal STC plan and collect the funds through applicable state collection procedures.

3. Requirements for State Participation. To participate in Federal STC, the state agency must:

- a. have an approved Agreement with the Department;
- b. assure payments of Federal STC are made in accordance with the requirements under section 3306(v) FUTA, as added by section 2161 (a);
- c. assure that no plan is approved or payments are provided to individuals who are participating in seasonal, temporary, or intermittent employment with the Federal STC employer;
- d. assure that only individuals who are eligible for UC can be paid for Federal STC
- e. assure employers pay one-half the amount of Federal STC paid under the plan and such amount shall be paid into the state's unemployment fund and shall not be used for the purposes of calculating an employer's contribution rate under section 3303 (a) (1) FUTA;
- f. report in accordance with this guidance and any relevant subsequent guidance to the Department, as required;
- g. develop operating instructions and train appropriate staff to provide for timely and proper Federal STC payments;

4. Participating State Agencies Responsibilities. State agencies shall:

- a. develop a process to review, approve/disapproval, modify and potentially revoke Federal STC employer plans;
 - b. develop a Federal STC claim intake process and assure payments are made promptly and properly,
 - c. develop a coordinated enrollment and outreach strategy with appropriate parties to encourage eligible employers to participate in Federal STC as a layoff aversion strategy; and
 - d. educate business service staff, rapid response teams, One-Stop Career Center, unemployment insurance staff, and others, as appropriate, about Federal STC
- Note: WIA Rapid Response funds may be used to support a STC outreach strategy.

5. Federal STC WBA and Other Information. Employees receive all earnings for hours worked for the week plus a percentage reduction of their unemployment rate.

- a. Federal STC Monetary Determinations will be made by first determining the individual's WBA (including dependents' allowances), as if the individual were to be

totally unemployed. The Federal STC rate is then determined by multiplying the WBA as determined above by the percentage the employer has chosen to reduce the work week. The resulting calculation would then be rounded, if necessary, to the nearest whole dollar according to the applicable state law. The result, after the rounding, is the amount the individual would have as an STC payment.

Example: the Federal STC employer chose a 20% reduction of work based on a 40 hour work week. The Federal STC employee has a WBA of \$400 with a \$25 dependents' allowance (DA).

Base Period WBA	\$400.00
DA	+\$25.00
Total WBA & DA	\$425.00
20 percent reduction in work week	x.20
Federal STC payment	=\$85.00

- b. Redetermination. An individual filing a Federal STC initial claim or weekly certification has the same rights to request a reconsideration of a determination as are provided for in the applicable state law for regular compensation.
- c. Notices to Individual. The state agency must give written notice to the individual of any determination or redetermination of an initial claim and all weekly Federal STC claims, if the weekly claim is denied. Each notice must include such information regarding the rights to reconsideration or appeal, or both, using the same process that is used for redeterminations of regular compensation. In addition, the state agency must also provide the following notice to all Federal STC claimants filing an initial claim for a Federal STC claim:

NOTICE

Under 18 U.S.C. §1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a Federal Offense, punishable by a fine or imprisonment for not more than five years, or both, under Title 18 of the United States Code.

- 6. Benefit Charging. Federal STC payments, unlike state STC payments, are non-chargeable payments, and must not impact the employer's contribution rate under section 3303 (a)(1) FUTA.
- 7. Termination of the Federal STC Agreement. A state agency may terminate the Agreement with the Department upon providing 30 days' written notice to the Department.
- 8. Termination of Federal STC Payments. If a state subsequently enacts a state law providing for the payment of STC under a STC program that meets the definition of such a program under section 3306(v) FUTA, as added by section 2161 (a), the state shall not be eligible to make Federal STC payments for any weeks of unemployment beginning

after the effective date of such state law but the state may be eligible to receive payments under section 2162 (state STC) after the effective date of such state law.

9. Notification. State agencies should make every attempt to notify the employer community of the availability of Federal STC. The Department strongly encourages states to leverage Rapid Response funds to support this layoff aversion strategy.
10. Written Agreement or MOU. States should secure a written agreement or MOU with participating partners (e.g. rapid response, business services, and/or One-Stop Career Centers). The written agreement should contain:
 - a. Names of all the parties to the agreement;
 - b. A brief description of the collaboration process jointly developed;
 - c. Identification of those who will provide the specific services;
 - d. Description(s) of how feedback will be provided; and
 - e. Description(s) of the role of the services providers.
11. Record Maintenance and Disposal of Records. The state will maintain Federal STC claims and payment data (including data on eligibility, disqualification, and appeals) as required by the Department.
 - a. Record Maintenance. Each state will maintain records on the administration of the Federal STC program, and will make all such records available for inspection, examination, and audit of federal officials or employees as the Secretary or the Department may designate or as may be required by the law.
 - b. Disposal of Records. The electronic/ paper records created in the administration of the Federal STC program must be maintained by the state for three years after initial action (including appeals or court action) on the Federal STC claim, or for less than the three-year period if copied by micro photocopy or by electronic imaging method. At the end of the three-year period, the Federal STC records are transferred to the state accountability under the conditions for the disposal of records that apply to UCFE and UCX records as explained in Chapter XXII of ET Handbook No. 391 (1992 Edition) and Chapter I, Page I-15, of ET Handbook No. 384 (1984) Edition.
12. Disclosure of Information. Information in records made and maintained by the state agency in administering Subtitle D, section 2163 must be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation, and the entitlement of individuals thereto, may be disclosed under provisions of applicable state law meeting the requirements of 20 CFR part 603. This provision on the confidentiality of information obtained in the administration of Subtitle D, section 2163 shall not apply, however, to information, reports and studies with no individual indentifies.
13. Appeal and Hearings.
 - a. Applicable State Law. The applicable state law provisions concerning the right of appeal and fair hearing from a determination or redetermination or entitlement to regular compensation shall apply to determinations and redeterminations of eligibility for or entitlement to Federal SEA.
 - b. Rights of Appeal and Fair Hearing. The right of appeal and opportunity for a fair hearing to claims for Federal SEA must be consistent with these instructions and with

sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and 503(a)(3)).

c. Promptness of Appeals Decisions.

1) Decisions on appeals under the Federal SEA Program must accord with the “Standard for Appeals Promptness-Unemployment Compensation” in 20 CFR Part 650.

2) Any applicable state law provision allowing the advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, must apply to proceedings involving entitlement to Federal SEA.

14. Inviolate Rights to Federal STC. Except as specifically provided in these instructions, the rights of individuals to Federal STC shall be protected in the same manner and to the same extent as the rights of persons to regular compensation are protected under the applicable state law. Such measures must include protection of claimants for Federal STC from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, of their rights to Federal STC. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to applying for and receiving Federal STC.

15. Fraud, Overpayment and Recovery. Recovery of any overpayment established on a claim for STC benefits shall be done in accordance with the applicable state law on the recovery of regular UC overpayments.

**Attachment 1 to UIPL No.
Implementing and Operating Instructions for Federal Short Time Compensation (STC)**

Reporting Instructions

1. **General.** The Federal STC program report ETA 5159 must be submitted electronically through the UI Required Reports electronic reporting system. Federal STC activity should also be reported on the ETA 2112 as specified below in section 2.

Reporting will begin with the first reporting period in which the state enters into a federal-state Agreement to operate the Federal STC program.

2. **Data Elements to be Reported.**

- a. ETA 5159. (OMB No. 1205-0010). The STC-specific report form for the ETA 5159 has one additional cell that must be reported. This cell for Federal STC will describes the number of employers with Federal STC plans.

- 1) **Section D cell C10, Number of Participating Employers.** Enter the total number of employers who have entered into a plan(s) with the state agency that will provide Federal STC benefit payments to claimants. If a single employer has multiple plans with the state, or multiple plans within an establishment, count that employer only once.

- b. ETA 2112. (OMB No. 1205-0154). Transactions involving Federal STC benefits reimbursed with Federal funds must be reported in the aggregate on the electronic ETA 2112 report. Information reflecting Federal STC transactions must be reported as follows:

- 1) **Line 23b, Short-Time Compensation - Federal.** Report on line 23b, column F the amount of Federal STC funds deposited into the state's benefit payment account.

- 2) **Line 42b, Short-Time Compensation - Federal.** Report on line 42b, column F the net amount of STC paid for using Federal STC funds. States are to report gross Federal STC benefit disbursements in column F regardless whether amounts of federal tax withholdings are applied to Federal STC benefit payments.

3. **OMB Approval.** These instructions have been submitted to OMB, but have not yet been approved. Therefore, they should be considered draft instructions of proposed data collections. ETA will notify states upon OMB approval and communicate any changes deemed necessary during the OMB approval process.

**Attachment 2 to UIPL No. XX-12
Federal-state Agreement (Draft)**

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Layoff Prevention Act of 2012

**Federal Short-Time Compensation Program
Operated by State Workforce Agency**

AGREEMENT BETWEEN

THE STATE OF

AND

THE SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR

The Secretary of Labor, U.S. Department of Labor, and the State of _____, in order to carry out the provisions of the Subtitle D of Title II of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96), hereinafter referred to as the “Act,” hereby agree as follows:

- I. The _____ State Workforce Agency, hereinafter referred to as the “Agency,” will make payments of Short-Time Compensation (STC) benefits in accordance with the Act (which is incorporated herein by reference), and will cooperate with the U.S. Department of Labor (Department), and with other state agencies in making such payments.
- II. The Agency and other appropriate state officials will perform all of the functions and duties undertaken under this Agreement in accordance with the terms of this Agreement and the regulations, operating instructions, or guidance issued by the Department of Labor.
- III. If a state enters into this Agreement and subsequently enacts a state law providing for the payment of STC that meets the definition under Section 3306(v), FUTA, the state—
 - a. shall not be eligible for Federal STC payments for weeks of unemployment beginning after the effective date of such state law; and
 - b. shall be eligible to receive payments under section 2162 of Subtitle D after the effective date of such State law, pending the Department’s certification and the state entering into a agreement to receive 100 percent state STC reimbursement.
- IV. The Agency will maintain such records pertaining to the administration of the Act as the Department requires, and will make all such records available for inspection, examination, and audit at such time and by such federal officials or employees as the Department may designate or as may be required by law.
- V. The Agency will furnish to the Department or its agents such information and reports, and will fully participate in any studies or evaluations, the Department determines are necessary or appropriate for carrying out the purposes of the Act.

VI. At the beginning of each month, the Department will make available in the Payment Management System an amount equal to 50 percent of the estimated amount needed by the State for payment of Federal STC during that month, adjusted for any excess or shortfall in amounts provided in any prior month. For each of the first three months after implementation of the program, the state should provide an estimate of expected benefit payments. For each month thereafter, the estimated amount to be made available to the state will generally be equal to 60% of the Federal STC amount paid in the most recent month for which data are reported, adjusted for any excess or shortfall in amounts provided in prior months. Estimates may be adjusted during the month at state request, if necessary. The Department intends to use the Federal STC reported on the ETA 2112 as the basis for estimates and adjustments.

In making Federal STC payments, the Agency agrees that:

- a. Provide that Federal STC payments are made in accordance with requirements under section 3306(v) FUTA;
- b. No payments shall be made to the Agency for Federal STC paid to any individual in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to the individual for a week of total unemployment.
- c. No payments shall be made to the Agency for benefits paid to any individual by the Agency under a Federal STC program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.
- d. No payment shall be made to the Agency with respect to more than 104 weeks of Federal STC benefits.
- e. Provide that a state will provide thirty days' written notice to the Department if it chooses to terminate the agreement;
- f. Provide that Federal STC plans entered into by an employer must provide that the employer will pay the state an amount equal to one-half of the amount (50 percent) of Federal STC paid under such plan. Such amount shall be deposited in the state's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate under section 3303(a)(1) FUTA;
- g. No payments shall be made to the Agency under a Federal STC program for weeks of unemployment ending on or after May 24, 2014.

VII. The Agency will use all funds paid to the State for the payment of benefits solely for the purpose of Federal STC. The Agency will return to the United States Treasury, upon request of the Department, any such funds (a) if the Department finds that the funds were not needed for such purpose or that the funds have been used for a purpose other than that for which they were intended, or (b) upon termination of this Agreement. The "Audit Requirements for Grants, Contracts, and other Agreements," 29 CFR 96, will apply to disagreements under this section.

VIII. The Agency will take such action as reasonably may be necessary to recover for the account of the United States all benefit amounts improperly paid and restore any lost or misapplied funds paid to the state for benefits or the administration of this Agreement.

IX. To the extent that agencies of the state obtain bonds to protect funds of the state, the Agency will obtain bonds to protect funds made available to it for the payment of benefits and the costs of administration of this Agreement. The pro rata cost of such bonds shall be considered a necessary cost of administration. If under state law the state acts as a self-insurer of state funds and does not obtain bonds to protect them, the Agency shall so inform the Department in writing, and in such case the state will act as a self-insurer with respect to funds which are paid to the state under this Agreement.

X. The Agency will apply the methods of administration required by Section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)) to the functions undertaken under this Agreement.

XI. This Agreement may be terminated by either party on thirty days written notice. If this Agreement is terminated, the Agency will process and pay benefits for all weeks of unemployment, which end before the date of termination for which such payments are due.

XII. This Agreement shall be effective beginning when both parties have signed it.

Secretary of Labor
U.S. Department of Labor

Date

By DRAFT ONLY – Not for Signature
(State Signatory)

(Title)

DATED:

For the State of

CERTIFICATION OF AUTHORITY

NAME DRAFT ONLY – Not for Signature

TITLE

I hereby certify that the above-named person has the authority under the Constitution and laws of this State to sign this Agreement on behalf of the State.

Signature: DRAFT ONLY – Not for Signature

Title:

Date:

**Attachment 3 to UIPL No. XX-12
Unemployment Insurance Program FY 2012 Annual Funding Agreement Addendum**

**UNEMPLOYMENT INSURANCE (UI) PROGRAM
FY 2012 ANNUAL FUNDING AGREEMENT ADDENDUM
for
MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012**

Grant/Agreement No. UI-XXXXX
(To be completed by DOL)

CFDA # 17.225 Unemployment Insurance

- 1. Relationship to Other Agreements:** Unless inconsistent with specific terms and conditions provided herein, the terms and conditions of the Fiscal Year (FY) 2012 UI Program annual funding agreement between the U.S. Department of Labor, Employment and Training Administration (Grantor) and the **STATE/Commonwealth** of (Grantee) apply to the funds identified in Section 2 and are hereby incorporated by reference.
- 2. Grant Funds:** This annual funding grant agreement addendum addresses additional requirements applicable to funds appropriated in the Middle Class Tax Relief and Jobs Creation Act of 2012 (the Act) for Reimbursement of Short-Time Compensation (STC) benefit payments and for applicable administrative costs.
- 3. Purposes and Principles:** A major goal of the Act is to have State Workforce Systems pursue strategies that would positively impact employment levels by satisfying certain needs of unemployed workers and employers. To that end the Act makes funds available to states engaging in programs that have been shown capable of supporting the goal. Funds are also made available to evaluate the various strategies to help determine their effectiveness and to understand their impact on workers, employers, and the labor market. Consistent with transparency and accountability principles, reporting and monitoring of activities and associated funding are essential and grantees are expected to support these activities through compliance with all related requirements.
- 4. Limit on Funds:** Funds appropriated or otherwise made available to states by the Act are to be strictly used for the intended purposes as stated in agreements and guidance or operating instructions issued by the Department.
- 5. Reporting: Program Management and Financial Expenditure:** For the purposes of funding, accountability, monitoring, administering, and evaluating the various programs and activities required or permitted by the Act, the Grantee agrees to furnish timely to the Department such information, as approved by OMB under the Paperwork Reduction Act, as the Department, or representative, requests. The manner in which states will satisfy such requests will be conveyed in guidance issued by the Department.
- 6. Applicable Authority:** Funds provided under the Act and provided under this grant agreement addendum must be expended in accordance with all applicable federal statutes, regulations, policies, and guidance.
- 7. Grant Expenditure Period:** The period of availability of funding varies for the different components and will be provided in the Notice of Obligation as funding is provided.
- 8. Notice of Obligation:** Funds will be obligated and allocated via a Notice of Obligation (NOO) grant modification to the FY 2012 annual funding agreement/grant. Obligations and costs may not exceed the amount obligated by the NOO modification unless otherwise modified by the Grantor. Upon execution of this addendum, the NOO modification to the FY 2012 grant will be issued. Funds are obligated for the amount indicated in the NOO grant modification document in accordance with the Grantee's UI allotment levels. The Federal obligation level will be amended by the Grant Officer to increase (or adjust) amounts available to the Grantee as funds become available for obligation and additional NOO (or Deobligation) grant modifications are required and issued.
- 9. Signatory Information:** By signing below, the signatories agree to the terms and conditions of this agreement addendum on behalf of their respective agencies indicated below. In addition, the Grantee's expenditure of any funds properly granted hereunder constitutes acceptance of the award, including any new or additional terms and conditions as may be attached hereto.

GRANTEE:
(State/Commonwealth)

_____ TAX EIN# _____
Agency Name

_____ PMS EIN# _____
Mailing Address (If known)

_____ PMS PIN ACCT# _____

_____ DUNS# _____

BY _____ Date
Governor/Authorized Signatory Signature
(Print name)

Title _____ Email Address _____

**FOR GRANTOR: U.S. Department of Labor/Employment and Training Administration
200 Constitution Ave NW; Room N-4716; Washington, DC 20210**

_____ Date
THOMAS C.MARTIN Signature
Grant Officer

Attachment 4 to UIPL No. XX-12
Subtitle D of the Layoff Prevention Act of 2012, Sec.2163

H.R.3630

Middle Class Tax Relief and Job Creation Act of 2012 (Enrolled Bill [Final as Passed Both House and Senate] - ENR)

Subtitle D, SEC. 2163. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION AGREEMENTS.

(a) Federal-State Agreements-

(1) IN GENERAL- Any State which desires to do so may enter into, and participate in, an agreement under this section with the Secretary provided that such State's law does not provide for the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)).

(2) ABILITY TO TERMINATE- Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) Provisions of Federal-State Agreement-

(1) IN GENERAL- Any agreement under this section shall provide that the State agency of the State will make payments of short-time compensation under a plan approved by the State. Such plan shall provide that payments are made in accordance with the requirements under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

(2) LIMITATIONS ON PLANS-

(A) GENERAL PAYMENT LIMITATIONS- A short-time compensation plan approved by a State shall not permit the payment of short-time compensation to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.

(B) EMPLOYER LIMITATIONS- A short-time compensation plan approved by a State shall not provide payments to an individual if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

(3) EMPLOYER PAYMENT OF COSTS- Any short-time compensation plan entered into by an employer must provide that the employer will pay the State an amount equal to one-half of the amount of short-time compensation paid under such plan. Such amount shall be deposited in the State's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate under section 3303(a)(1) of the Internal Revenue Code of 1986.

(c) Payments to States-

(1) IN GENERAL- There shall be paid to each State with an agreement under this section an amount equal to--

(A) one-half of the amount of short-time compensation paid to individuals by the State pursuant to such agreement; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(2) TERMS OF PAYMENTS- Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(3) FUNDING- There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(4) CERTIFICATIONS- The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(d) Applicability-

(1) IN GENERAL- An agreement entered into under this section shall apply to weeks of unemployment--

(A) beginning on or after the date on which such agreement is entered into; and

(B) ending on or before the date that is 2 years and 13 weeks after the date of the enactment of this Act.

(2) TWO-YEAR FUNDING LIMITATION- States may receive payments under this section with respect to a total of not more than 104 weeks.

(e) Special Rule- If a State has entered into an agreement under this section and subsequently enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State--

(1) shall not be eligible for payments under this section for weeks of unemployment beginning after the effective date of such State law; and

(2) subject to paragraphs (1)(B) and (2) of section 2162(b), shall be eligible to receive payments under section 2162 after the effective date of such State law.

(f) Definitions- In this section:

(1) SECRETARY- The term `Secretary' means the Secretary of Labor.

(2) STATE; STATE AGENCY; STATE LAW- The terms `State', `State agency', and `State law' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

Attachment 5 to UIPL No. XX-12 STC Questions and Answers

General

1. Question: If an STC employer changes its plan, will the plan be terminated and the individuals revert back to regular UC claims instead of STC? Are individuals going to be jumping back & forth between regular and STC claims?

Answer: The state agency has the responsibility to determine if an STC plan is terminated. It is possible that individuals may be paid STC benefits, revert back to UC benefits and again return to and be paid STC benefits. The maximum benefit amount will remain the same and STC benefit payments are limited to 26 times the weekly benefit amount.

2. Question: Does STC cover part-time individuals as long as they are not seasonal, temporary, or intermittent?

Answer: STC benefits may cover part-time individuals who are not seasonal, temporary, or intermittent. A state cannot pay STC benefits to employees who are seasonal, temporary, or intermittent if the state requests reimbursement for STC costs or requests to participate in Federal STC. If and when a state's law complies with 3306(v) FUTA, then the state may pay STC benefits for approved STC plans to employees who are seasonal, temporary, or intermittent; the state will not be eligible for reimbursement.

Federal STC

1. Question: Can a state enact a temporary program for only as long as it is Federally-funded for 100 percent of the STC benefits?

Answer: Yes. However, the states cannot receive a STC grant. The STC grant requires that a state certify that it will not discontinue the STC program. If the state chooses to discontinue after this certification, then the STC grant funds are subject to recapture.

Administration and Reporting

2. Question: Are there funds to cover a state's STC administrative costs?

Answer: Yes, there are funds to cover STC administrative costs. Once a state's law is fully approved (as meeting Subtitle D), state will request reimbursement via the monthly 5159 reports (for benefit costs) and via the quarterly UI-3 for administrative cost associated with expanding, marketing and operating a STC program.

Charging

3. Question: Can a state non-charge all its STC benefits?

Answer: No, a state STC program cannot non-charge the STC benefits. All state STC payments must be charged to the employment record of the participating employers, as provided under state law. Reimbursable employers would be liable for any STC benefit costs in the same fashion that reimbursing employers must pay for regular benefits. However, please note that the Federal STC program cannot charge the employers for STC benefits paid but the agreement requires employers to pay 50% of the STC costs.