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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 05-13, Change 1

TO: STATE WORKFORCE AGENCIES

FROM: MOLLY E. CONWAY
Acting Assistant Secretary

SUBJECT: Unemployment Compensation (UC) Work Search Requirements

1. **Purpose.** To provide the Department of Labor's (Department's) interpretation of the Federal law requirement that state UC law require that UC claimants, as a condition of UC eligibility, must be actively seeking work.

2. **References.**
   - Section 2101 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law No. 112-96;
   - Section 303 of the Social Security Act (SSA), 42 U.S.C. Section 503;
   - Sections 3304 and 3306 of the Federal Unemployment Tax Act (FUTA), 26 U.S.C.
   - Chapter 23;
   - 5 U.S.C. chapter 85;
   - Section 236(d) of the Trade Act of 1974, as amended;
   - The Federal-State Extended Unemployment Compensation Act of 1970 (EUCA);
   - Title 20 Code of Federal Regulations (CFR) Part 615;
   - 20 CFR Part 602, Appendix A (Employment Security Manual, Part V, Sections 6010-6015);
   - 20 CFR Part 604;
   - Unemployment Insurance Program Letter (UIPL) No. 26-13, Change 1, *Request for Current Law on State Work Search Requirements;*
   - UIPL No. 05-13, *Work Search and Overpayment Offset Provisions Added to Permanent Federal Unemployment Compensation Law by Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012*;
   - UIPL No. 01-16, *Federal Requirements to Protect Individual Rights in State Unemployment Compensation Overpayment Prevention and Recovery Procedures;*
   - UIPL No. 02-16, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits*;
   - UIPL No. 04-01, *Payment of Compensation and Timeliness of Determinations during a Continued Claim Series*;

RESCISSIONS None	**EXPIRATION DATE** Continuing

- ET Handbook No. 395, *State Operations Handbook for the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Program*, 5th Edition (November 2009);
- Training and Employment Notice (TEN) No. 18-16, *Pathways to Reemployment Tools and Resources*; and
- TEN No. 02-17, *Enhanced My Reemployment Plan Tools and Resources.*

3. Background.

The Middle Class Tax Relief and Job Creation Act of 2012, enacted on February 22, 2012, included several provisions related to UC. These provisions include an amendment to the Social Security Act (SSA) adding a work search requirement as a condition of UC eligibility in Section 303(a)(12), SSA. This provision requires, as a condition for a state to receive grants for the administration of its UC law, that state law include, among other things, "[a] requirement that, as a condition of eligibility for regular compensation for any week, a claimant must be … actively seeking work." Regular compensation means compensation payable to an individual under a state law and compensation payable pursuant to 5 U.S.C. chapter 85 (UC for Federal Employees and UC for Ex-Servicemembers), but does not include extended compensation or additional compensation. (See 20 CFR 615.2(e).) Prior to the amendment to the SSA adding a work search requirement as a condition of UC eligibility in Section 303(a)(12), SSA, there was no Federal work search requirement. All states had such a requirement and states have had flexibility to excuse work search so long as claimants met the Federal requirements that they be able and available for work. However, the enactment of Section 303(a)(12) limits this flexibility.

UIPL No. 05-13 provided initial guidance about this requirement. As noted in that issuance, all states currently require that claimants search for work to be eligible for UC. On April 10, 2014, the Department issued UIPL No. 26-13, Change 1, to request that states provide the Department with information pertaining to their state's work search requirements in effect as of January 1, 2014, to ensure the Department has sufficient information to develop Federal work search policies and to determine if states are meeting Federal statutory requirements. The Department obtained additional information about state work search policies and practices from Benefit Accuracy Measurement (BAM) reviews. Based on all of this information, the Department is issuing this guidance to emphasize the requirement that claimants must actively seek work.

4. Interpretation.

a) Defining what activities constitute a search for work.

Section 303(a)(12), SSA, requires that, among other things, a claimant actively seek work to be eligible for benefits. States have significant discretion to define what activities constitute an acceptable search for work. As explained in UIPL No. 05-13, it is a requirement that claimants engage in "concerted and effective efforts . . . on a weekly basis in order to find a suitable job in the shortest period of time that is practicable would meet the requirements of Section 303(a)(12), SSA. . . ." A state's law need not require claimants to perform a specific number of work search activities to conform to Federal UC law. However, states must require that claimants perform at least one work search activity during each week claimed in order to be eligible for UC.

b) Requirement to search for work each week and conduct at least one work search activity every week.

Federal UC law requires, as a condition of states receiving UC administrative grants, that state law require claimants to, among other things, actively seek work as a condition of eligibility for regular compensation for any week. Federal law establishes strictly limited circumstances under which states may exempt UC claimants from the work search requirement, as explained below. Therefore, states must make actively seeking work a condition of eligibility for each week claimed, except when a work search exemption is required or permitted. This requirement must apply also to waiting weeks, since individuals must meet all UC eligibility requirements for a week to count as a waiting week, although it is not generally a compensable week.

Historically, a number of states have provided a formal or informal "warning" to claimants upon detection of a work search issue. While the specifics differ from state-to-state, these policies permit claimants to be eligible for UC the week that the requirement was not met, but the state warns the claimant of ineligibility if work search requirements are not met in subsequent weeks. Because the work search requirement is now, under Federal law, a condition of UC eligibility for each week claimed, states may not pay UC for a week in which an individual does not meet the work search requirement. State formal warning policies are not consistent with the requirements of Federal UC law. That is, if a state obtains information indicating that an individual did not meet the work search requirements for a given week, the state must investigate the issue raised and may not pay UC if it is determined that the claimant did not meet the work search requirements. As in all continued claims, if an eligibility issue arises, a state must adjudicate the eligibility issue and, if supported by the facts, determine that the individual was not eligible for UC for the week(s) in question. (See UIPL No. 04-01.) In addition, states may not make the initial applicability of the work search requirement conditional on any other actions, such as creation of a work search plan (however, a state may consider the creation of a work search plan to be an acceptable work search activity).

States must take all reasonable measures to ensure that individuals are made aware of the requirement to search for work each week and the specific tasks required to satisfy that obligation. (See Employment Security Manual Section 6011A.) Consistent with the guidance in UIPL No. 02-16, states must make this information available in a variety of ways to ensure that individuals with disabilities, with limited English proficiency, older individuals, or those who experience challenges with technology or literacy, are aware of the applicable requirements and have genuine access to UC.

Once the state has established that an overpayment has occurred because the claimant failed to search for work in that week, the state may, if permitted under state law, determine it is against equity and good conscience to recover the overpayment. (See UIPL No. 01-16.) When making a determination whether to grant a waiver of repayment of the overpayment because it would be against equity and good conscience, the state should apply the waiver in accordance with its written guidelines for granting waivers.

c) Exceptions to the work search requirement.

UIPL No. 05-13 identifies several required exemptions from the work search requirement. They are:

- *Short-time compensation participation*. Federal law provides that employees meet the availability for work and work search test requirements while collecting short-time compensation by being available for their normal workweek. (See Section 3306(v)(5), FUTA.);
- *Participation in training approved by the state agency*. Federal law prohibits the denial of UC to an individual who is in training with the approval of the state agency due to application of state law provisions relating to availability for work, active search for work, or refusal to accept work. (See Section 3304(a)(8), FUTA.)

While not addressed in UIPL No. 05-13, Federal law also requires the following additional exceptions to the work search requirement:

- Individuals participating in the self-employment assistance (SEA) program receive an allowance in lieu of UC, and the UC work search requirements do not apply to them. However, these individuals must actively engage on a full-time basis in activities related to establishing a business and meet all other requirements for SEA participation. (See Section 3306(t)(2)(A), FUTA.)
- If claimants are members of a union with a union hiring hall, and the union hiring hall is the only permissible way for them to seek work in accordance with the terms of their union membership, then the work search requirement may not be applied to them. Applying the work search requirement to these claimants would conflict with section 3304(a)(5), FUTA, which prohibits states from disqualifying an individual for refusing to accept work that would require the individual to resign from or refrain from joining a *bona fide* labor organization. In this situation, a claimant meets the work search requirement if he or she has done everything necessary to be eligible to receive work from the union's hiring hall, such as being a member in good standing of a union with a hiring hall and complying with the union's rules or standards related to searching for work.

As noted in UIPL No. 05-13, states may provide for additional limited circumstances under which states may not hold UC claimants to the work search requirements. For example, claimants on jury duty or hospitalized for treatment of an emergency or a life-threatening condition may be exempted if permitted under the state's law. This exception is permissible because Federal law provides an exemption from work search requirements for extended benefits if the state law provides for such an exemption for the receipt of regular UC, which suggests that Congress deemed these exemptions to be acceptable. Therefore, this is permitted if state law provides for such an exemption. (See Section 202(a)(3)(A)(ii), EUCA and 20 CFR Part 615.8(g)(3)(i).)

States may determine that individuals who are on a temporary layoff with a definite recall date, and therefore job-attached, fulfill the active search for work requirement if they

maintain contact with, and remain available to, the employer with whom they are job-attached. This is consistent with the interpretation that an individual who is on temporary layoff, and is available to work for the employer that has temporarily laid-off the individual, is available for work. (See 20 CFR Part 604.5(a)(3).) Similarly, if a claimant has accepted an offer of work and has a definite start date, a state may consider the individual job-attached and not subject to additional work search requirements. The number of weeks that the work search requirement would not apply must be reasonable. Similarly, if a claimant is receiving partial UC based on reduced hours with an employer and remains available for additional work with that employer, the state may find that the claimant has fulfilled the work search requirement for the weeks worked, as they remain in otherwise suitable work.

Finally, if there has been a presidentially declared disaster and it is impractical, or perhaps impossible to do a work search, a state may suspend the work search requirement for claimants in the area impacted when they are unable to perform work search activities as a direct result of the disaster. The period of time that this requirement is suspended must be limited to the time that the disaster affects the ability to search for work.

d) Requirement to affirm work search activities in continued claims, to maintain a record of work search activities, and to provide the record to the state agency upon request.

Weekly benefits are paid under the presumption of eligibility. In order to create the presumption of eligibility for UC, states must ask claimants filing continued claims whether they searched for work as required during the week claimed. Otherwise, claimants would not have the opportunity to demonstrate that they have met the UC work search requirement and the state would be unable to determine whether the individual is eligible for UC with respect to the week being claimed. If a claimant self-identifies an eligibility issue related to work search, the state must conduct fact-finding and give the claimant the opportunity to provide additional information while adjudicating the issue.

States are not required to have claimants submit documentation of their work search as part of the continued claim process. However, if work search information is not required at that time, at a minimum, states must require claimants to maintain a record of their work search activities and provide the information to the state agency upon request for verification purposes. This requirement is derived from section 303(a)(1), SSA, which requires states to pay benefits "when due" and prohibits states from paying UC to claimants who are not entitled to benefits. These records should include the type of work search activity (employer contact, job fair attendance, reemployment services, etc.) and information about specific work search activities (i.e., description of the activity, telephone, e-mail, interview, the company/employer/service provider name, date and time of activity, and result of the activity (if any)).

When asked to provide the work search record to the state agency, absent circumstances beyond the claimant's control, a general verbal statement by a claimant that he or she performed a work search activity is insufficient. In such situations, the state must conduct further inquiry. Consistent with UIPL No. 02-16, states must take all reasonable measures to ensure claimants are aware of the work search requirements for UC eligibility, including

maintaining a record of their work search activities. The state agency must also inform claimants how long they must keep the records to ensure that the claimant maintains the records for a time-period sufficient to respond to an appeal, an audit, or review.

States are encouraged to consider collecting work search activity information with each continued claim, even if the state does not review the information for every claimant upon collection. Collecting work search activities routinely is a more consistent way to document work search efforts and ensures the information is available in case of audit or review. While it may not be an efficient use of resources for states to verify all claimants' work search activities for each week, to the extent resources permit, states are strongly encouraged to conduct random work search audits in addition to reviewing work search activities as part of an eligibility assessment under the Reemployment Services and Eligibility Assessment program and BAM reviews.

5. **Implementation / Benefit Accuracy Measurement Impact.** The Department recognizes that states will need time to ensure their laws, regulations, administrative rules, and operational procedures are consistent with this guidance. However, states are required to implement this guidance as soon as it is reasonably and administratively feasible. As states make the required changes to their laws, regulations, administrative rules, and operational procedures, they will also need to ensure changes are made to the coding of their BAM cases based on the guidance in this UIPL. After states have implemented these changes, they will no longer be able to provide formal warnings when claimants fail to meet the work search requirement, and should no longer code BAM cases as "technically proper." A description of the appropriate coding is described in the Attachment.

6. **Best Practices for Reducing Work Search Errors.** Work search improper payments are one of the largest root causes of UI overpayments. Because work search errors generally cannot be prevented before the payment must be made to the claimant in accordance with Federal law, it is difficult for states to proactively reduce the largest root cause of UI improper payments. Despite the difficulty states experience in preventing work search errors before they occur, the UI program continues to share promising practices states may use to attempt to address this root cause.

   a) Re-envisioning state work search requirements.

   The goal of work search requirements should be to support the claimant carrying out activities that will result in a job. Recognizing that the labor market, how employers hire, and how individuals find jobs has changed over time, states are strongly encouraged to "re-envision" work search requirements for UI claimants beyond just employer contacts. The Department understands that a majority of individuals get jobs through networking, so participation in job clubs or entering a profile in an on-line platform that supports networking with employers should be considered a work search activity. The Department also knows that the Internet has changed how employers recruit for jobs. Internet job searches should be considered an acceptable work search activity and states should help claimants learn how to capture documentation of on-line work search activities. States are also encouraged to customize applicable work search requirements to be reasonable for the individual and to

expand the types of permissible work search activities that meet the requirement. States should also consider local labor market conditions (e.g., rural versus metropolitan statistical areas) when establishing individual work search obligations.

A federal-state workgroup developed a framework for re-envisioning work search requirements for the 21st century labor market in the context of the unemployment insurance (UI) program. The work group's efforts focused on identifying activities that actually support reemployment of UI claimants and other jobseekers and helping states rethink the types of activities claimants may engage in to meet their work search requirements. The Department published the work group's recommendations on the "Reemployment Connections" web page that can be accessed at: https://rc.workforcegps.org/. The purpose of this website is to provide the entire workforce development system with new tools and resources, including the recently developed "My Reemployment Plan," for use by jobseekers and workforce professionals providing reemployment services in American Job Centers. For more information about the new tools and resources, please see TEN No. 18-16, issued on November 21, 2016, and TEN No. 02-17, issued on July 14, 2017.

b) Targeted messaging.

Many work search errors are often not intentional but are due to a misunderstanding of the work search requirements on the part of claimants. This misunderstanding of what constitutes proper work search and the required documentation may account for a portion of work search errors. Targeted messaging by states to better educate claimants may help reduce these errors. A 1997 study conducted in Maryland showed the impact of more aggressively informing claimants that their work search would be subject to verification and the consequences of intentionally falsifying their work search information. The Maryland study found a reduction in work search errors for the group that received the more aggressive communications about verification and enforcement.[1] In addition, recent messaging innovations using behavioral science techniques have proven successful in the New Mexico state UI program.[2] Information from this implementation, as well as evidence-based trials in state employment service programs, may be leveraged by states to develop targeted messaging to claimants regarding work search requirements.[3]

c) Online documentation of work search.

Some states require claimants to provide their work search activities at the time of certification. Some states with modernized UI systems have a separate on-line process that claimants must use to document their compliance with the state's work search requirements. These systems can automatically recognize if the required number of contacts is entered and warns the claimant if he/she has not met the work search requirement. By requiring claimants to report their work search activities on-line as part of the certification process, states may avoid establishing work search errors for claimants who do not respond to the log

1 Abt Associates and Battelle Memorial Institute, 1997, https://ows.doleta.gov/dmstree/op/op98/op_02-98.pdf.
2 http://www.pewtrusts.org/-/media/assets/2016/10/behavioral_analytics_help_save_unemployment_insurance_funds.pdf.
3 https://www.dol.gov/asp/evaluation/BIStudy/IndividualTrials/Reemployment-services-trial.htm.

request or indicate that they have been searching for work but are unable to provide or recall their specific activities.

d) Random audits.

Many states require claimants to keep a log of their work search activities and be able to produce it when asked. A small number of states allocate resources to conduct random audits of claimant work search logs. Claimants may be more likely to ensure they remain in compliance with their work search obligations if there is a real possibility that they may be subject to an audit.

7. **Action Requested.** The Department requests that States review this UIPL and assure their laws and practices conform to and comply with its guidance.

8. **Inquiries.** States should direct questions concerning this guidance to the appropriate Regional Office.

9. **Attachment.** Benefit Accuracy Measurement Coding of Work Search Overpayments

Attachment

Benefit Accuracy Measurement (BAM) Coding of Work Search Overpayments

States that have made the required changes to their laws, regulations, administrative rules, or operational procedures will also need to ensure changes are made to the coding of their BAM cases based on the guidance in this Unemployment Insurance Program Letter. Once the changes are implemented, states will no longer code BAM cases as code "14." Code 14 is defined as "BAM determines payment was too large except for formal warning rule that prohibits official action. The payment is "technically" proper due to law/rules requiring formal warnings for unacceptable work search efforts."

The following codes may be used when coding elements "ei2"; codes 10, 11, 12, 13, 15, and 16. However, codes 12, 13, 15, and 16 will only be used in limited circumstances. For instance:

- Code 12 will only be used when the state waives the recovery of an established work search overpayment. A copy of the overpayment recover waiver must be in the case file.

- Code 13 will only be used when the state no longer has authority to adjudicate an issue detected with a UC payment (e.g., the payment was made three years ago and state law authorizes adjudication of issues only up to one year after the benefit year expires or a prior determination has been issued and an appeal was not filed within the state's time limits).

- Code 15 may only be used if it is determined that the claimant does not share responsibility for the work search error (ei4 Error Responsibility cannot contain 1).

- Code 16 will only be used when there is a valid appeal reversal decision in the case file reversing a BAM program work search ineligibility determination.

The Department expects the majority of the work search ineligibility determinations (claimants fail to meet the work search requirements) will result in non-fraud overpayments; code 11.