

U.S. DEPARTMENT OF LABOR Employment and Training Administration Washington, D.C. 20213	CLASSIFICATION
	UI
	CORRESPONDENCE SYMBOL
	TURL
	DATE February 2, 1981

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 14-81

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : OFFICE OF THE DEPUTY ASSISTANT SECRETARY
 ROBERTS JONES
 Administrator
 Office of Management Assistance

SUBJECT : Amendments Made by P.L. 96-499 (Omnibus Reconciliation Act of 1980) which affect the Unemployment Compensation Program

1. Purpose. To advise States of the amendments made of the Emergency Jobs and Unemployment Assistance Act of 1974; the Federal-State Extended Unemployment Compensation Act of 1970; Title IX of the Social Security Act; Chapter 85, Title 5 United States Code, and Section 3306(b) of the Internal Revenue Code of 1954.

2. References. Sections 1021 through 1026, and 1141(b) of P.L. 96-499.

3. Background. The amendments made by P.L. 96-499 have made several significant changes affecting the unemployment compensation program, some of which will require changes in State laws. Sections 1021-1026 and 1141 of P.L. 96-499 respectively, provide for (a) the termination of special Federal funding of unemployment benefits paid to CETA/PSE workers; (b) elimination of the Federal share for the first week of extended benefits in any State which does not have a noncompensable waiting week for regular benefits; (c) establishment of a special account within the Unemployment Trust Fund from which States would be paid for the costs of unemployment benefits based on Federal employment (each Federal agency would be required to reimburse that account from its appropriations for costs attributable to its employees); (d) the denial of extended benefits to individuals who fail to meet certain specified requirements relating to acceptance of or application for suitable work, or who fail to actively engage in seeking work (denial under these provisions is required under the EB program as a condition for certification of the State law), and prescribes requirements for purging certain disqualifications in order to

RESCISSIONS	EXPIRATION DATE
	January 31, 1981 1982

DISTRIBUTION

establish eligibility for EB, and (e) change in the definition of "wages" for purposes of the Federal unemployment taxes so as to include as wages any payment by an employer of an employee's liability for State unemployment compensation taxes (without deduction from the remuneration of the employee) with the exception of payments for domestic service in the private home of the employer or for agricultural labor which will continue to be excluded from taxable wages. Each of these amendments, including commentary on their application, are discussed below on a section by section basis corresponding to the section numbers of P.L. 96-499.

4. Section 1021 - Termination of Provisions Providing Reimbursement for Unemployment Benefits Paid on the Basis of Public Service Employment.

Section 1021 of the Omnibus Reconciliation Act of 1980 (P.L. 96-499) amended Part B of Title II of the Emergency Jobs and Unemployment Assistance Act of 1974, by adding at the end of Part B the following new section:

"Section 224. Notwithstanding any other provision of this part, the term 'public service wages' shall not include remuneration for services performed in weeks which begin after the date of the enactment of this section."

The date of enactment of P.L. 96-499 and section 1021 thereof was December 5, 1980.

Any unemployment compensation paid to a former CETA/PSE worker is paid out of the State's UI trust fund. Prior to this amendment, however, the State fund was reimbursed for the amount of the compensation that was based on CETA/PSE employment from general revenues contained in the Federal Unemployment Benefits and Allowances (FUBA) account, as authorized in Title II of Part B of the 1974 Act. Under this amendment, Federal reimbursement of these benefit costs from FUBA will be phased out as services performed prior to December 5, 1980 are no longer contained in base periods used by the States.

Although Federal reimbursement from FUBA funds of benefits paid to CETA/PSE workers will be terminated for benefits based on services performed after December 5, 1980, there will continue to be Federal reimbursement for benefits based on services performed prior to that date, in effect, providing a transition period for adjustment to the new funding requirement.

With elimination of reimbursement for the FUBA account for benefit costs for services performed by CETA/PSE workers in weeks after December 5, 1980, the question of coverage and hence liability for such costs must be determined under State law. If services performed by CETA/PSE workers are in

"employment" as defined under State law, then employers of such workers providing such employment would be subject to the State law and consequently they would be liable for any benefits paid to their former employees. However, if such workers are not performing services in "employment" under State law by reason of being excluded under such law their coverage must be achieved through voluntary election.

Additional information concerning the impact of this amendment and procedural instructions for implementing the requirements of Section 1021 of P.L. 96-499 were issued on December 24, 1980, in UIPL 13-81 and FM 69-81.

5. Section 1022--Waiting Period for Unemployment Insurance Benefits.

Section 1022 of P.L. 96-499 amended section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 to change the basis on which States will be reimbursed for extended benefits paid to claimants. Prior to this amendment the State was entitled to reimbursement with respect to all sharable regular and sharable extended compensation (as defined in the law) irrespective of whether or not the State law contained a waiting week requirement for regular benefits. Effective December 5, 1980, that rule of reimbursement is changed. However, it should be noted that this amendment has no effect whatsoever on the rights of claimants to extended benefits as is required by the Act.

As amended, section 204(a)(2) of the Act provides:

* * * *

(2) No payment shall be made to any State under this subsection in respect to compensation (A) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, or (B) paid for the first week in an individual's eligibility period for which extended compensation or sharable regular compensation is paid, if the State law of such State provides for payment (at any time or under any circumstances) of regular compensation to an individual for his first week or otherwise compensable unemployment. (New language underlined.)

This amendment means that if the State does not provide for a waiting week for regular benefits, the State will not be entitled to reimbursement for the first week of extended benefits paid to any claimant; that is, the first week of what otherwise would be sharable regular or sharable extended compensation as defined in section 204. Accordingly,

such a State would bear 100 percent of the benefit costs for the first week of sharable regular or sharable extended benefits paid. However, for the second and following weeks, the State would be entitled to the usual 50 percent Federal reimbursement.

As indicated in the parenthetical phrase of new subparagraph (B), the Federal share for the first week of sharable regular or extended benefits will be eliminated in any case where a State law provides for the payment of regular benefits for the waiting week "(at any time or under any circumstances)". The provision as written has application to a variety of State law provisions permitting payment for a waiting week. For example, it would apply where payment of benefits is allowed for the waiting week when the claimant has been unemployed for a specified number of weeks. It would also be applicable to (1) those States which do not require a waiting week to be served in the new benefit year if the individual was in claim status during the last week of the old benefit year when the two benefit years are "back to back"; (2) those States which do not require a waiting week if the individual is partially unemployed in what would otherwise be a waiting week, and (3) State law provisions which permit suspension of the waiting week under specified conditions. It is of no consequence that the suspension of the waiting week applies only to a portion of the claimants entitled to benefits under the State law. Since the State law provides in the above described circumstances "for payment (at any time or under any circumstances)" it would result in the loss of reimbursement for the first week of sharable regular or extended benefits paid to all claimants in that State including those that were not affected by the suspension.

In summary, if the effect of any State law provision permits the payment of regular benefits for the first week in a claimant's benefit year or for a week that would otherwise be a waiting week, whether under general or specific circumstances, there would be no reimbursement for the first week of sharable regular or extended benefits paid to claimants in that State.

Effective Date of Provisions in Section 1022

Section 1022(b)(1) provides that the amendment made by section 1022 is effective "in the case of compensation paid to individuals during eligibility periods beginning on or after the date of enactment of this Act." P.L. 96-499 became effective on December 5, 1980. Thus the

amendment is effective only with regard to those individuals whose eligibility periods begin on or after that date. The essential factor therefore is the identification of those individuals who have established eligibility periods as of the prescribed date. Under section 203(c) of the Federal-State Extended Unemployment Compensation Act of 1970, an individual's eligibility period is defined as "the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period." An individual whose benefit year began or ended after the date such extended benefit period began in a State will have an eligibility period which begins at the beginning of the extended benefit period or at the beginning of the benefit year, whichever occurs later. Any individual whose eligibility period has been established because of the extended benefit period that began on July 20, 1980, or earlier in some States, will not come within the purview of this amendment. Since an extended benefit period was in effect in all States on December 5, 1980, therefore, an individual's eligibility period for purposes of applying amended section 204(a)(2) will begin on or after that date only by the establishment of a benefit year which begins on or after December 5, 1980. The amendment applies to compensation paid to such individuals. Accordingly, it will be consistent with this amendment if, effective on and after December 5, 1980, the State law does not provide for payment of regular benefits "at any time or under any circumstances" with respect to the first week of otherwise compensable unemployment in the benefit year.

Additional Time Allowed to Amend State Law to Eliminate Waiting Period.

However, there is an exception to the effective date. States are provided with additional time after the December 5, 1980, effective date to eliminate provisions in their State laws allowing payment of regular benefits for the first week of otherwise compensable unemployment where the Secretary of Labor determines that legislation is required to eliminate such provisions. Specifically, section 1022(b)(2) provides that:

"In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to eliminate its current policy of paying regular compensation to an individual for his first week of otherwise compensable unemployment, the amendments made by this

section shall apply in the case of compensation paid to individuals during eligibility periods beginning after the end of the first regularly scheduled session of the State legislature ending more than thirty days after the date of the enactment of this Act."

Pursuant to paragraph (2), when the Secretary of Labor determines, after appropriate inquiry of the State involved, that legislation is needed to eliminate the State's policy of paying regular compensation for the first week of otherwise compensable unemployment in the benefit year, the State will be allowed until the end of the first regular session ending more than 30 days subsequent to December 5, 1980, in order to amend its law. For example, if the legislature of a State that has been given the additional time under paragraph (2) meets on January 8, 1981, in a regular session and adjourns, sine die, on May 6, 1981, the session ended more than 30 days after December 5, 1980, and accordingly the amendment in section 1022 of P.L. 96-499 would be effective with respect to that State on May 7, 1981, but would apply only if the State failed to amend its law so as to be consistent with amended section 204(a)(2).

Therefore, it will be consistent with this amendment if the State law is amended, effective in the above example on or before May 7, 1981, so that the law does not provide for payment of regular benefits "(at any time or under any circumstances)" with respect to the first week of otherwise compensable unemployment in the benefit year.

If the State fails to amend its law as set forth above, then the amendment to section 204(a)(2) will take effect in that State on May 7, 1981, (in the above example) with respect to individuals whose eligibility period (benefit years) begin on or after that date.

Because of the different periods that State legislatures are in session, the effective dates for the amendment to paragraph (2) for States given the grace period provided therein, will vary depending on the ending dates of such sessions. If a State does not have a regular legislative session in 1981 but meets in 1982 it will be given until the end of the session to amend its law since that session would constitute "the first regularly scheduled session of the legislature ending more than 30 days after" December 5, 1980.

States whose laws provide for the payment of regular compensation for the first week of otherwise compensable unemployment will be notified if any such provisions of their laws are affected by the amendments in section 1022, and will be asked to confirm the status of those provisions, and to indicate whether legislative amendments are needed to eliminate the practice or whether such provisions can be rendered inoperative by interpretation effective as of December 5, 1980. If the State agency confirms the status of such provisions and states that they have been nullified by appropriate action as of the above specified date, such States will be notified that the amendments of section 1022 will have no applicability. If the State provides notification that legislative action is needed, this will form the basis for a determination by the Secretary allowing a grace period as provided under paragraph (2).

Other Consideration Applicable to Amendments in Section 1022

In order to avoid problems in receiving proper reimbursement for sharable regular or extended benefits paid, States that now do not provide for a waiting week and which amend their laws to comply with section 204(a)(2), should document the claim for reimbursement to clearly indicate when the denial is effective with respect to that State. Such documentation would include the date on which the legislative session commenced and the date the legislature adjourned, sine die.

The elimination of the Federal share of extended or sharable regular benefits applies only to the first weekly claim at the beginning of the individual's extended benefits claim. It does not apply to subsequent weeks claimed for extended benefits. It should be noted that the cost of extended benefits to UCFE and UCX claimants will continue to be financed 100 percent irrespective of whether the State law provides for an uncompensated waiting week.

The enactment of a waiting week requirement for regular benefits is not a requirement for the receipt of administrative grants or the allowance of tax offset credit. The effect of not requiring a waiting week for regular benefits is that the State will not receive Federal reimbursement for the first week of sharable regular or extended benefits paid in the individual's eligibility period.

6. Section 1023--Benefits on Account of Federal Service to be Paid by Employing Federal Agency. Section 1023 of the Omnibus Reconciliation Act of 1980 amended both Title IX of the Social Security Act and Chapter 85, Title 5 of

the United States Code to reflect the establishment of a Federal Employees Compensation Account. The new requirement for Federal agency accountability is intended to make each Federal agency aware of the need to monitor, and in appropriate cases to contest benefit claims of employees and former employees.

Under section 1023(a) of P.L. 96-499, a new section 909 is added to Title IX of the Social Security Act which establishes the Federal Employees Compensation Account in the Unemployment Trust Fund, to be used for the purposes specified in new section 8509 of Title 5, United States Code, which has been added to Subchapter 1 of Chapter 85 by section 1023(b) of P.L. 96-499.

New section 8509 in essence provides that each Federal employing agency will be required to reimburse the Federal Employees Compensation Account from its appropriations for the benefit costs attributable to service in its employ. This will not apply to benefit costs of military personnel (UCX) which will continue to be funded from the Federal Unemployment Benefits and Allowances (FUBA) account as in the past. The provision would be effective for benefits based on services performed by individuals after December 31, 1980.

Under current law, Federal employees may receive unemployment compensation if they meet the qualifying requirements of the State in which they were last employed. Benefits for Federal employee claimants are not affected by these amendments and therefore will continue to be payable to such individuals under the same rules and procedures as apply to individuals covered by the State laws.

At present, all costs of benefit payments to former Federal employees are funded through a single appropriation account within the budget of the Department of Labor rather than being charged to the appropriations of the employing agencies. P.L. 96-499 modifies this procedure by providing that the budget account from which States will be reimbursed will receive its funding from payments made by each agency out of that agency's appropriations.

Specific information concerning implementation of the new requirement as it affects State UI agencies will be forthcoming soon.

7. Section 1024 -- Denial of Extended Benefits to Individuals Who Fail to Meet Certain Requirements Related to Work.

Section 1024 of P.L. 96-499 amended Section 202(a) of the Federal-State Extended Unemployment Compensation Act of 1970 to add new paragraphs (3), (4) and (5). These amendments establish new disqualification requirements for extended benefit claimants, relating to failure to accept offers of or referrals to suitable work, actively seeking work and duration disqualifications applicable to extended benefits. The new requirements are only applicable to extended benefit claimants and not to claimants for regular benefits. The changes are effective with respect to weeks of unemployment beginning after March 31, 1981. The full text of the amendments are set out at the end of this section.

Disqualification for failure to apply for or to accept suitable work and for failure to actively engage in seeking work.

Section 202(a)(3)(A) and (B) provide that an extended benefit claimant who fails to apply for or to accept suitable work (as defined in the amendment) or who fails to actively engage in seeking work is not entitled to benefits for the week in which such failure occurred, and that the claimant is further ineligible for extended benefits beginning "with the week following the week in which such failure occurs" and until the individual "has been employed during at least 4 weeks" and has earned a total of 4 times the individual's extended weekly benefit amount.

This means that the individual must work in each of at least 4 weeks and must have earned at least 4 times the weekly benefit amount in order to purge the disqualification. This disqualification is not the same as requiring an individual to earn four times his weekly benefit amount. If the individual works in 3 weeks and earns four times his weekly benefit amount, the requirement is not met. It must be shown that he worked in each of at least 4 weeks during each of which he had some earnings and that the total of his earnings equalled or exceeded four times his extended weekly benefit amount. There is no requirement that the weeks be consecutive. The State has no option to require that the weeks be consecutive or to require that services be in covered employment under the State law or any other State or Federal law.

Under most, if not all, State laws, the disqualification for not actively seeking work is on a week to week basis. The claimant is denied benefits until such time as he is again actively seeking work. As soon as he meets the actively seeking work requirements, he is restored to benefits. The amendments change this concept for extended benefit claimants.

Under current provisions applicable to claimants for regular benefits, a specified disqualification is imposed for individuals who failed to apply for or to accept suitable work without good cause. The amendments impose a separate disqualification for this cause which is applicable to claimants for extended benefits only, regardless of whether a different disqualification applies to regular benefit claimants.

Definition of "suitable work"

Section 202(a)(3)(C) defines suitable work, with respect to any individual, as--

"any work which is within such individual's capabilities except that if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law."

Under these provisions, if the individual's prospects for securing work in his customary occupation are good, the determination as to whether the work is suitable would be made pursuant to the definition of suitable work in the State law which applies to claimants for regular benefits. If such a showing is not made, the definition of suitable work applicable to extended benefit claimants applies. The criteria for determination shift from the State law to the Federal law requirement depending upon whether the prospects of obtaining work in the individual's customary occupation "within a reasonably short period" are good or not. The determination of whether an individual's prospects are good or not is up to each State. We recommend requiring that any evidence of the individual's prospects for obtaining such work show that he or she can expect to find work within a period not to exceed four weeks beginning with the first week for which extended benefits are claimed, except when the individual has a definite offer of employment with a specific starting date. If the agency determines that the individual's prospects are not good, then the agency must decide the issue of suitability of work on the basis of the Federal definition of suitable work in section 202(a)(3)(C).

The phrase "any work which is within such individual's capabilities" means that the individual has the physical and mental capacity to do the work and that he has the background which would enable him to perform the job. This suitable work test is, however, modified in a number of significant respects by the provisions of subparagraph (D) of section 202(a)(3) (but not by subparagraph (E) which has no applicability to subparagraph (A)(i) of section 202(a)(3)). The modifications in subparagraph (D) are discussed in detail under subsequent headings.

This position on "suitable work" as defined in section 202(a)(3)(C) applies to all of the provisions of paragraph (3), including subparagraphs (A) through (F), except as specifically modified by subparagraph (D).

Conditions to be met for imposing a disqualification for failure to apply for or to accept suitable work.

Section 202(a)(3)(D) sets out the conditions to be met for imposing the disqualification for failure to apply for or to accept suitable work, which in effect modify the definition of suitable work in subparagraph (C).

Under paragraph (D)(i)(I) and (II) an individual cannot be disqualified for failing to accept any offer of suitable work, or to apply for any suitable work to which he or she was referred by the State agency, if the gross weekly pay of the job does not exceed the extended weekly benefit amount payable to him for a week of total unemployment (plus the amount of any supplemental unemployment benefits (SUB) payable for such week). Put another way, the offered remuneration must exceed the extended weekly benefit amount (plus any SUB payable for the week) for the disqualification to apply.

No special computation of the extended weekly benefit amount is necessary for purposes of this provision since the reference to subsection (b)(1)(C) in subparagraph (D)(i) is to the amount computed for extended benefit purposes.

Note that the disqualification cannot be imposed if the "gross average weekly remuneration . . . for the position does not exceed . . ." Accordingly, it must be found that the offered gross remuneration is higher not just equal to the extended weekly benefit amount (plus SUB, when it is payable).

In cases where the weekly pay offered may vary because of overtime, piece rates or other variables, the gross pay must be determined by "an average", that is the actual pay of

workers on the job over a period that will be a fair indication of the earnings in the recent past of workers in that job for that employer. This provision applies to any offer of suitable work, but of course the offer must actually be made to the claimant and it must be a bona fide offer by an authorized official or intermediary. On the other hand, the failure to apply provision applies only to referrals by the State agency, but here too the position to which referral was made must be determined to meet the suitable work test of section 202(a)(3).

Further, under subparagraph (D)(iv), no extended benefit claimant may be disqualified under the failure to accept or failure to apply provisions if the position pays less than the higher of the Federal minimum wage or any applicable State or local minimum wage. In considering the Federal minimum wage, any exemptions from FLSA (Fair Labor Standards Act) coverage are not pertinent. Thus, if the Federal minimum wage without regard to any exemptions, is higher than the applicable minimum wage required by State or local law, the Federal minimum is controlling. If the applicable State or local minimum is higher than the Federal rate, the State or local rate is controlling.

Conditions to be met for imposing disqualification for failure to apply for or to accept suitable work--offer in writing and job listed with employment service.

Subparagraph (D)(ii) further modifies the suitable work test of section 202(a)(3). Even if a job is considered suitable under the previously discussed criteria, the extended benefit claimant cannot be disqualified under the failure to accept or failure to apply provision if the job was not offered to the claimant in writing as provided in subparagraph (D)(ii).

Normally, the State employment service makes "referrals", i.e., the claimant is referred to the prospective employer for a listed job. The employer makes the offer of the job to the claimant. The provision clearly indicates that unless the prospective employer makes the offer to the claimant in writing of the job, the claimant cannot be disqualified if he refuses to accept it. This provision differs from State law in that it prohibits disqualification of extended benefit claimants on the basis of an oral job offer by the employer, but this provision tracks State law (and relevant Federal requirements) in requiring that a job offer be bona fide, be communicated to the claimant, and be made by an authorized official or intermediary.

These considerations apply only to the failure to accept provision and have no applicablity to the failure to apply provision because the offer cannot accompany the referral. Therefore in cases of the failure to apply provision this requirement is satisfied where the referral is made to the individual in writing and contains all of the elements of a written job offer as specified herein and which elements are consistent with the job order specifications.

The written job offer should give the name of the employer location of job, the job title, starting date, the hours and the pay. A more detailed description may not be required as a condition of imposing a disqualification.

Subparagraph (D)(ii) also provides that a claimant for extended benefits cannot be disqualified under the failure to accept or failure to apply provisions if the job "was not listed with the State employment service."

A job "listed with the State employment service" means that there was a valid job order in active employment service files. If an employer notifies the agency that he offered a claimant a job and the claimant refused the job, the claimant cannot be disqualified under section 202(a)(3)(A)(i) if that employer had not given the employment service an order for that job prior to the offer and its refusal. This requirement is also applicable to the failure to apply provision.

Application to extended benefit claimants of suitable work criteria for a regular benefit claimants.

Subparagraphs (D)(iii) provides that an individual shall not be denied benefits under the failure to accept or failure to apply provisions:

"if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (E)."

The provisions intend that the current suitable work criteria in the State law with respect to regular benefits should remain effective with respect to extended benefits so long as they are not in consistent with subparagraphs (C) and (E). Notice at the outset that the reference to subparagraph (E) has no effect since none of the provisions in subparagraph (E) involve considerations applicable to the denial of benefits under the failure

to accept or failure to apply provisions. Subparagraph (E) relates solely to the denial of benefits under the actively seeking work provisions and therefore can have no applicability to the provisions in subparagraph (D)(iii).

The usual provision in State laws provide that the following should be considered in determining suitability of work: The degree of risk to the health, safety and morals of the claimant, the claimant's physical fitness, his prior training and experience, prior earnings, length of unemployment and prospects for securing local work in his customary occupation, and the distance of the work from his residence.

These suitable work criteria are applicable to extended benefit claimants to the extent that the criteria are not specifically addressed by and are not inconsistent with the amendments in section 202(a)(3).

The degree of risk to the claimant's health, safety and morals, his physical fitness and his prior training and experience would be applicable to extended benefit claimants since they are factors to be included in determining his capability to do the work as provided in subparagraph (C). However, any consideration of prior training and experience factors under the State law that gives greater weight to such factors beyond the mere capability of the individual to perform the offered work, would be inconsistent with the provisions in subparagraph (C) and therefore inapplicable in determining the individual's capability to do the work. Length of unemployment and prospects for securing work in his customary occupation are not applicable criteria since these matters are dealt with in subparagraph (C). However, the fact that the work offered was not at the claimant's highest skill would not be reason for holding the work unsuitable so long as the work was within the individual's capabilities.

Factors such as the claimant's prior earnings, including the availability of fringe benefits, would not be applicable, since the amendments set out the remuneration requirements involved in determining whether a job is suitable.

Application of Labor Standards Requirements of Section 3304(a)(5), and Requirements of Section 3304(a)(8), FUTA

Irrespective of the new conditions under which claimants for extended benefits must accept offers of or apply for suitable work as prescribed above, no individual may be denied benefits under new section 202(a)(3)(A)(i) if the work refused by such individual failed to also meet any of the labor standards required by section 3304(a)(5) of the Federal

Unemployment Tax Act. These standards are designed to protect a claimant from a denial of benefits for refusing to accept new work "if (A) the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the claimant than those prevailing for similar work in the locality; and (C) if as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization." These conditions are included in all State laws since they are necessary for certification of States by the Secretary of Labor. Thus, even though a job offer or referral is deemed suitable under subparagraph (C) of section 202(a)(3) and would be within the terms of the conditions specified in subparagraph (D) of that section, nevertheless, such work shall not be deemed suitable work for any individual if it does not accord with the labor standards provisions required by section 3304(a)(5), FUTA. Accordingly, States should take appropriate action to assure continued application of the labor standards before imposing any disqualification under section 202(a)(3). Any additional labor standards in a State law may be given effect to the extent that the result would be consistent with subparagraph (D)(iii).

Similarly, the requirements of section 3304(a)(8), FUTA, relating to individuals in training, override the new requirements in section 202(a)(3).

Actively engage in seeking work

Subparagraph (E) requires an extended benefits claimant to make a "systematic and sustained effort" to seek work each week and to provide "tangible evidence" to the State agency that he has done so. Subparagraph (E) gives meaning to the term "actively engaged in seeking work" as used in the disqualification provision of subparagraph (A)(ii).

Regular benefit claimants may be required to seek work on their own initiative either by a specific "actively seeking work" provision or as a condition of being "available for work." However, the actively seeking work requirement needs to be applied in a different context with respect to extended benefit claimants than it is applied to regular benefit claimants. It is intended by this requirement that the individual claiming extended benefits be required to make a more diligent effort to seek work than would normally be required of an individual receiving regular

benefits. Accordingly, SESAs must monitor each EB claimant's weekly eligibility in light of the special requirement concerning search for work. This monitoring should include an appraisal of the reasonableness of the claimant's effort to assure that such efforts are of a systematic and sustained nature, and that the claimant furnishes tangible evidence of his search efforts.

The "tangible evidence" which the claimant is to provide for each week should be a written record of his/her work seeking activities for each week which contains as a minimum: employer name and address, person contacted, date of contact, type of work applied for, and outcome of work inquiry. A requirement that the individual provide documentation from employers should not be imposed because, among other considerations, it would be a burden to employers.

The level of economic activity in the labor market area and the kinds of work available are important factors in determining whether a systematic and sustained work seeking effort is being made. Employment service information and any job counselling interviews as well as the results of aptitude testing would be pertinent. Similarly, when a review of the claimant's work seeking activities indicates a need for employment services, as in the Eligibility Review Program, the claimant should be referred for such services so that his work seeking activities may be more successful. All of these considerations are relevant in determining whether the claimant's "tangible evidence" is adequate to demonstrate a systematic and sustained effort to obtain work.

The requirement that individuals "actively engage in seeking work" is applicable to all claimants with respect to each week for which extended benefits are claimed, notwithstanding any State law provision to the contrary. In this respect several State laws provide that a claimant can establish eligibility for benefits even though he or she is not available for work in any week because of illness, disability, death in the family, jury duty, and various other reasons. Individuals who are deemed eligible for extended benefits by reason of such provisions cannot be excused from meeting the actively seeking work requirement of section 202(a)(3). Such individuals must be subject to this requirement to the same extent as all other claimants for extended benefits. If they cannot meet this requirement the disqualification must be imposed pursuant to section 202(a)(3).

Accordingly, the State law provisions on availability for work and the exceptions thereto which are applicable to claimants for regular benefits would not be applicable to the same extent to claimants for extended benefits.

Referrals by the employment service

Subparagraph (F) provides that extended benefit claimants shall be referred to jobs which meet the suitability requirements applicable to extended benefit claimants under new section 202(a)(3). Since most if not all referrals are made by the employment service, this means that employment service placement officers and job order takers, must be familiar with the requirements.

Subparagraph (F) does not mean that employment service personnel are directed, in effect, to make a determination that the job is suitable and that the individual will be disqualified if he fails to apply for or to accept the job. That determination is the responsibility of unemployment insurance adjudicators. The intent of the provision is to require that State agencies actively refer extended benefit claimants to any suitable work to which clauses (i), (ii), (iii) and (iv) of subparagraph (D) do not apply. Of course individuals should not be referred to jobs which are clearly unsuitable under the extended benefit suitability criteria.

Requirement for duration of unemployment disqualification

Section 202(a)(4) provides that no disqualification for regular benefits which has been imposed under a State law for "voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment" will be deemed terminated for purposes of determining eligibility for extended benefits unless the termination of the disqualification occurs as the result of the application of a State law provision requiring employment subsequent to the date of such disqualification in order to terminate the disqualification. A postponement of benefits (for example, denial of benefits for the week in which the disqualifying act occurred and the 5 weeks immediately following) would not meet the Federal provision. Nor would the disqualification be considered terminated by the fact that an individual when not required to do so under the State law had engaged in employment during or after serving such a disqualification. If a State law itself does not require a duration of unemployment disqualification for regular benefits in order to terminate a disqualification for the specified causes that individual would not be entitled to extended benefits.

Although section 202(a)(4) refers to disqualifications for voluntarily leaving employment, discharge for misconduct, and refusal of suitable work, it has reference to the provisions of the State laws imposing these types of disqualifications. Thus, paragraph (4) applies to all types of the three disqualifications as they may be provided in State law, including, for example, voluntary leaving without good cause, discharge or suspension for misconduct or gross misconduct, and refusal to accept a referral to or to apply for suitable work to which referred.

We recommend that any State amending its law to impose a work requirement for terminating a disqualification for the specified causes require at a minimum that the individual be employed in at least 4 weeks and earn remuneration equal to not less than 4 times the individual's weekly benefit amount subsequent to the date of such a disqualification.

Sharable regular benefits

Section 202(a)(5) provides that "no payment shall be made under this act to any State in respect of any sharable regular compensation paid to any individual for any week" if compensation would not have been payable to such individuals under sections 202(a)(3) and (4). Thus the requirements of those sections apply also to claims for sharable regular compensation as defined in section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA). However, the only consequence of a State's failure to amend its law to apply the requirements in sections 202(a)(3) and (4) to claims for sharable regular compensation would be loss of the Federal share of the cost for such compensation. The applicability of the requirements in sections 202(a)(3) and (4) to sharable regular compensation is not a condition that must be met by the States for purposes of certification by the Secretary of Labor. This is the case because section 202(a)(5) only specifies the circumstances in which "payment" for the Federal share of costs for sharable regular compensation will be made to a State. Accordingly, if a State is to continue to receive the Federal share for the costs of sharable regular compensation, then it must amend its law to make such requirements applicable to claims for such compensation effective as of the first week beginning after March 31, 1981.

Effective date for Provisions in Sections 202(a)(3), (4) and (5)

The provisions in section 202(a)(3), (4) and (5) are effective with respect to weeks of unemployment beginning after March 31, 1981. Accordingly, the suitability requirements, the disqualification for failing to apply for or to accept suitable work and for not actively seeking work, and the duration of unemployment disqualification, are to be applied to claimants for extended and sharable regular benefits starting with weeks of unemployment beginning on or after April 1, 1981.

Text of Amendments to Section 202(a), EUCA

The amendments made by section 1024 of P.L. 96-499 which added new paragraphs (3), (4) and (5) to section 202(a), EUCA, and which are discussed in detail above, read as follows:

Section 1024. (a) section 202(a) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new paragraphs:

"(3)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period--

"(i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c)(sic)) or fails to apply for any suitable work to which he was referred by the State agency; or

"(ii) during which he fails to actively engage in seeking work.

"(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in clause (i) or (ii) of subparagraph (A), the individual shall be ineligible to receive extended compensation for any week which begins during a period which--

"(i) begins with the week following the week (sic) in which such failure occurs, and

"(ii) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by

the individual for being so employed is not less than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(c)) for his benefit year.

"(C) For purposes of this paragraph, the term 'suitable work' means with respect to any individual any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonable short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law.

"(D) Extended compensation shall not be denied under clause (i) of subparagraph (A) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work

"(i) if the gross average weekly remuneration payable to such individual for the position does not exceed the sum of --

"(I) the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C) for his benefit year, plus

"(II) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week;

"(ii) if the position was not offered to such individual in writing and was not listed with the State employment services;

"(iii) if such failure would not result in a denial of compensation under the provision of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (E); or

"(iv) if the position pays wages less than the higher of

"(I) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

"(II) any applicable State or local minimum wage.

"(E) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if

"(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

"(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

"(F) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide for referring applicants for benefits under this Act to any suitable work to which clauses (i), (ii), (iii), and (iv) of subparagraph (D) would not apply.

"(4) No provision of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

"(5) No payment shall be made under this Act to any State in respect of any sharable regular compensation paid to any individual for any week if, under the rules of paragraph (3) and (4), extended compensation would not have been payable to such individual for such week."

(b) The amendment made by this section shall apply with respect to weeks of unemployment beginning after March 31, 1981.

Implementing draft language for sections 202(a)(3) and (4)

The attachment contains draft language which can be used by States to implement the provisions in section 202(a)(3) and (4).

8. Section 1025--Conformity, compliance and effect of failure to meet certain requirements. If a State does not require a waiting week for regular benefit claimants as provided in section 204(a)(2), the State would not be entitled to reimbursement for the first week of extended

benefits paid to any claimant. That is the only consequence of the State's failure to include a waiting requirement under its law since a State does not have to satisfy the conditions in this provision for purposes of certification by the Secretary of Labor.

Section 1025 of the bill provides that the requirements in sections 202(a)(3) and (4) will become conformity and substantial compliance matters for the Secretary's certification of States for the certification period November 1, 1980, to October 31, 1981, and thereafter under FUTA. Accordingly, it will be necessary for States to amend their laws during 1981 to include provisions which meet the requirements in sections 202(a)(3) and (4) as a condition for certification by the Secretary of Labor for the 12-month period ending October 31, 1981. The amendments to the State laws should be made effective in the first week beginning after March 31, 1981, or the first week beginning after the end of the first regular session of the legislature ending more than 30 days after December 5, 1980.

The consequences of a State's failure to apply the requirements of section 202(a)(3) and (4) to any sharable regular compensation paid as is specified by section 202(a)(5) are discussed on page 18 of this letter under the heading sharable regular benefits.

9. Procedures for Implementing Section 1024 of P.L. 96-499. Detailed procedures for implementing the new requirements in section 202(a)(3), (4) and (5) will be issued at a later date in a separate letter.

10. Section 1141(b)--Inclusion in Definition of Wages for FUTA Taxes of Employee Taxes Paid by the Employer. Section 1141(b) of Public Law 96-499 amends the definition of wages in paragraph (6) of section 3306(b) of the Internal Revenue Code of 1954. Wages, as defined under paragraph (6) prior to this amendment, excluded any payment made by an employer of an employee's FICA tax or employee contribution under a State unemployment compensation law. That is, under the law prior to P.L. 96-499, employer payment of employee tax liability for State unemployment compensation taxes was specifically identified as an exception to the definition of wages for the purposes of taxation.

Section 3306(b)(6) of the Internal Revenue Code of 1954 was amended to read as follows:

(b) Wages.--For purpose of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include

* * * * *

(6) the payment by an employer (without deduction from the remuneration of the employee)

(A) of the tax imposed upon an employee under section 3101 or

(B) of any payment required from an employee under State unemployment compensation law, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor; (Bracketed language deleted; new language underlined.)

As a result of the amendment made by section 1141, the exemption from the definition of wages provided in paragraph (6) of 3306(b) is limited solely to remuneration paid to an employee for domestic service in the home of the employer and for agricultural labor. Consequently, employer payments (made without deduction from the remuneration of the employee) of employee taxes with respect to employees performing any other services are now included within the scope and definition of the term "wages" for the purposes of taxation under FUTA.

The provisions of section 1141 are effective with respect to remuneration paid after December 31, 1980. Thus prior to an until December 31, 1980, any employer payments for employee State unemployment compensation tax or FICA were not within the definition of "wages." After December 31, 1980, this exception applies only to domestic service in the home of the employer and agricultural labor.

Although this is not a Federal law requirement, if State law does not already so provide a definition of "wages" reflecting this amendment, the State may wish to amend its law to coincide with and recognize this change in FUTA, thus assuring application of State law consistent with this Federal law amendment. If deemed necessary, the State agency should seek appropriate amendment at the next regularly scheduled legislative session in view of the effective date of the amendment. In the absence of an

amendment to the State law treating such payments as wages, employers in the State would be liable for the full amount of the Federal tax on the employee's contributions paid by the employer without any benefit accruing to employees under the State unemployment insurance law.

11. Action Required. SESAs are requested to:

a. Take necessary action to assure by change in the State law that extended benefits are denied as required by new section 202(a)(3) and (4) of EUCA, and to avoid loss of the Federal share of costs for sharable regular compensation, apply such requirements to claims for sharable regular compensation, and,

b. where desired by the State in order to avoid loss of the Federal share of the first week of extended benefits paid in an individual's eligibility period, action should be taken to eliminate the State's policy of paying regular compensation to an individual for his first week of otherwise compensable unemployment.

12. Inquiries. Inquiries should be directed to your regional offices.

-1-

Draft Language to Implement Sections 202(a)(3)(4) and (5)
of the Federal-State Extended Unemployment Compensation
Act of 1970 as added by P.L. 96-499.

The following draft language is intended to be incorporated within the framework of the provisions set out in the section on the Extended Benefits program contained on pages 119-128 in the Draft Legislation to Implement the Employment Security Amendments of 1970--H.R. 14705, a copy of which has been previously issued to each State.

(h) (1) Notwithstanding the provisions of subsection (b) of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the Commissioner finds that during such period:

(A) he failed to accept any offer of suitable work (as defined under paragraph (3)) or failed to apply for any suitable work to which he was referred by the Commissioner; or

(B) he failed to actively engage in seeking work as prescribed under paragraph (5).

(2) Any individual who has been found ineligible for extended benefits by reason of the provisions in paragraph (1) of this subsection shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than 4 times the extended weekly benefit amount;

(3) For purposes of this subsection (h), the term 'suitable work' means, with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

(A) the individual's extended weekly benefit amount as determined under subsection (d)) 1/ plus

1/ The provisions in subsection (d) are contained on page 125 of the Draft Legislation to Implement the Employment Security Amendments of 1970--H.R. 14705. States should cite the corresponding provision in their law for computing the extended weekly benefit amount.

-2-

(B) the amount, if any, of supplemental unemployment benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,

(C) pays wages not less than the higher of --

(i) the minimum wage provided by section 6 (a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) the applicable State or local minimum wage;

(D) Provided, however, that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

(i) the position was not offered to such individual in writing and was not listed with the employment service;

(ii) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section _____^{1/} to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this paragraph (3);

(iii) the individual furnishes satisfactory evidence to the Commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in section _____^{1/} without regard to the definition specified by this paragraph (3).

^{1/} Include reference to section of State law that defines suitable work.

-3-

(4) Notwithstanding the provisions of subsection (b) to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under section _____ . 1/

(5) For the purposes of subparagraph (B) of paragraph (1), an individual shall be treated as actively engaged in seeking work during any week if --

(A) The individual has engaged in a systematic and sustained effort to obtain work during such week, and

(B) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(6) The employment service shall refer any claimant entitled to extended benefits under this Act to any suitable work which meets the criteria prescribed in paragraph (3).

(7) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under this act because he or she voluntarily left work, was discharged for misconduct or failed to accept an offer of or apply for suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this act requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

Any State law under which regular benefits payable to any individual in his benefit year exceed 26 times the individual's weekly benefit amount should revise the above draft language to assure application of these provisions to weeks beyond week 26 since, under new section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act, all of the requirements with respect to refusals of offers for or referrals to suitable work, failure to actively seek

1/ Include reference to section of State law that contains the labor standard provisions corresponding to those in section 3304(a)(5) of the Internal Revenue Code of 1954.

-4-

work or duration of unemployment disqualification, apply with respect to any weeks of sharable regular compensation paid to any individual under the State law. This is necessary, however, only if a State desires to continue to receive the Federal share for costs of such compensation after March 31, 1981.

The provisions in paragraph (7) of the above draft language are not necessary in the case of any State whose law now provides or is amended to provide a duration of unemployment disqualification for regular benefits for each of the causes designated.