

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 18-20

TO: STATE WORKFORCE AGENCIES

**FROM: JOHN PALLASCH /s/
Assistant Secretary**

**SUBJECT: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 –
Emergency Unemployment Relief for State and Local Governmental Entities,
Certain Nonprofit Organizations, and Federally-Recognized Indian Tribes**

1. **Purpose.** To provide states with instructions for implementing the emergency unemployment relief for state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian Tribes in Section 2103 of the CARES Act of 2020, Public Law (Pub. L.) 116-136.
2. **Action Requested.** The U.S. Department of Labor’s (Department) Employment and Training Administration (ETA) requests State Workforce Administrators to provide the information contained in this Unemployment Insurance Program Letter (UIPL) to appropriate program and other staff in state workforce systems as they implement the unemployment insurance (UI)-related provisions that respond to the economic effects of the Coronavirus Disease 2019 (COVID-19).
3. **Summary and Background.**
 - a. **Summary.** On March 27, 2020, the President signed into law the CARES Act. This legislation provides emergency assistance and health care response for individuals, families, and businesses affected by the COVID-19 pandemic. The CARES Act includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A.
 - b. **Background.** The CARES Act is designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The CARES Act builds upon actions previously taken by the Department, Congress, and the President. UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued April 2, 2020, summarized the various provisions within the CARES Act.

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This UIPL focuses on Section 2103 of the CARES Act, which authorizes emergency unemployment relief for state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian tribes.

4. **Guidance.** Under Section 2103(a) of the CARES Act, states are encouraged to interpret or amend their state unemployment compensation (UC) laws in a manner that provides maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest.

Amount of Funds Transferred from FUA (Section 903(i)(1)(B), SSA) (42 U.S.C. § 1103(i)(1)(B)). Section 2103(b) of the CARES Act amended the Social Security Act (SSA) by adding a new subsection 903(i), SSA (42 U.S.C. § 1103(i)). Section 903(i)(1)(B), SSA (42 U.S.C. § 1103(i)(1)(B)) authorizes transfers from the Federal Unemployment Account (FUA) to a state's account in the unemployment trust fund for one-half of the amount of compensation paid by the state to employees of state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian tribes that opt to make payments in lieu of contributions (*i.e.*, reimbursing employers).

Amount of Funds Reimbursed to Employer (Section 903(i)(1)(C), SSA) (42 U.S.C. § 1103(i)(1)(C)). Section 903(i)(1)(C), SSA (42 U.S.C. § 1103(i)(1)(C)) requires that the funds transferred from FUA shall be used **exclusively** to reimburse governmental entities and other organizations described in Section 3309(a)(2) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. § 3309(a)(2)) for amounts paid, in lieu of contributions, into the state unemployment fund to reimburse that fund for UC paid by the state for unemployment attributable to service with those entities.

As such, state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian tribes that make payments in lieu of contributions to their state's unemployment fund are eligible to be reimbursed for those payments, up to the amount of funds transferred from FUA for each claim.

The following sections outline the processes and conditions for transfers to provide relief under Section 2103 of the CARES Act.

- a. **Impact of Section 2103 of the CARES Act.** Upon payment from the reimbursing employer of the amount owed in lieu of contributions, the state may reimburse the employer for up to one-half of the amount of compensation paid by the state attributable to service with the employer.

As demonstrated in Example 1 of Attachment II, where the state provides no relief from payments due in lieu of contributions to reimbursing employers, upon the employer's payment into the state's trust fund, the state will provide the entirety of the amount of funds transferred from FUA for each claim to the reimbursing employer.

As demonstrated in Example 2 of Attachment II, where a state opts to provide partial relief from payments due in lieu of contributions to reimbursing employers, upon the

employer's payment into the state's trust fund, the state will reimburse the employer for those payments up to the amount of funds transferred from FUA for each claim.

- Where such relief is 50% or less of the amount owed by the reimbursing employer, the entirety of the amount of funds transferred from FUA for each claim will be used by the state to reimburse the reimbursing employer.
 - However, where such relief is more than 50% of the amount owed by the reimbursing employer, the state may see unintended consequences. The amount transferred to the state from FUA may **only** be used for the reimbursements to employers, so relief above 50% of the amount owed will result in the state not being able to use a portion of the funds transferred from PUA. Any unused portions of the amount transferred from FUA must be returned.
- b. Important Program Dates.** These partial reimbursements apply to all payments made in lieu of contributions for weeks of unemployment beginning on or after March 13, 2020 and ending on or before December 31, 2020, even if the unemployed individual is not unemployed as a result of COVID-19.
- c. Processing Financial Transactions.** Monthly transfers to the state accounts will represent 50% of the benefit disbursements for state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian tribes reported on lines 33, 34, and 35 of the ETA 2112 report. Upon receipt of the report, the Department will certify to the Secretary of Treasury for the transfer of amounts from the Federal Unemployment Account to the account of the state in the unemployment trust fund.

Whether the state requires reimbursing employers to pay monthly or quarterly, the employer must pay their bill in full before reimbursement can be processed. Withdrawal from the state unemployment account for reimbursement to state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian tribes will be accomplished using the transaction "Return of State Unemployment Contributions (DI-111)."

Upon expiration of the applicable period for the provisions of Section 2103 of the CARES Act, unused amounts of funding transferred for reimbursement remaining in state accounts will be transferred back to the FUA.

- d. Federal Government as an Employer.** As a reminder, the Federal Government is not an employer included in Section 3309(a)(2) of FUTA (26 U.S.C. § 3309(a)(2)), and, therefore, is not included in the relief under Section 2103 of the CARES Act. Thus, the Federal Government's payments of Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX) will not be reimbursed under this provision, and Section 2103 has no impact on charges for UCFE or UCX.

- e. Applicability to Other Unemployment Insurance Provisions in the CARES Act.** Payments of certain benefits which are 100% Federally-funded under the CARES Act will not be covered under this provision. These include Pandemic Unemployment Assistance (PUA) under Section 2102 of the CARES Act, Federal Pandemic Unemployment Assistance (FPUC) under Section 2104 of the CARES Act, and Pandemic Emergency Unemployment and Compensation (PEUC) under Section 2107 of the CARES Act. These programs do not result in a payment, in lieu of contributions, from employers, and, thus, payments under these programs are not covered under Section 2103 of the CARES Act.

If a state receives full Federal funding of the first week of regular compensation under Section 2105 of the CARES Act, those benefit payments also are not covered under Section 2103. This is because for the first compensable week for a claimant, there is no employer payment into the state unemployment fund to be reimbursed.

However, for full Federal funding for regular Short-Time Compensation (STC) benefits paid under Section 2108 of the CARES Act, those benefit payments may be covered under Section 2103 of the CARES Act. Even though Section 2108 of the CARES Act provides for full Federal reimbursement to the state unemployment fund for the full amount of STC paid, this reimbursement does not result in any payment to employers and does not relieve reimbursing employers of responsibility to make required payments in lieu of contributions. Therefore, Section 2108 does not preclude the application of Section 2103 of the CARES Act to amounts paid by such employers, which are attributable to STC benefit payments. To the extent that payment of STC results in a payment due in lieu of contributions under state law, after the reimbursing employer pays the amount due in lieu of contributions, such employer is eligible for reimbursement as described above.

- f. Applicability to Federal Share of Extended Benefits (EB).** Federal sharing of EB is available only if the provisions of the Federal-State Extended Unemployment Compensation Act of 1970, as amended (EUCA) (26 U.S.C. § 3304 note), are administered by the state in conformity with Federal UC law. Section 204, EUCA, provides that states will be reimbursed for one-half the amount of sharable regular compensation or sharable extended compensation paid to claimants.

The Families First Coronavirus Response Act (Pub. L. 116-127), in Division D of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), temporarily provides for 100% Federal funding of sharable EB payments through December 31, 2020 for states that receive Allotment I and II of the emergency administrative grants, as discussed in UIPL No. 13-20.

States are reminded that Section 204(a)(3), EUCA, prohibits Federal sharing for EB attributable to employment with state and local governments or Federally-recognized Indian tribes. This prohibition does not apply to EB attributable to employment with 501(c)(3) nonprofit organizations. This was not changed with the enactment of EUISAA. (Reference UIPL No. 12-09, Attachment I, Question 5).

To the extent that payment of EB results in a payment due in lieu of contributions under state law, after the reimbursing employer pays the amount due in lieu of contributions, such employer is eligible for reimbursement as described above.

g. Reporting.

ETA 2112 Line 15, column C, E – report amount of Federal transfer into state unemployment account.

5. Inquiries. States should direct inquiries to the covid-19@dol.gov and copy the appropriate Regional Office.

6. References.

- Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Title II, Subtitle A, Relief for Workers Affected by Coronavirus Act;
- Families First Coronavirus Response Act (Pub. L. 116-127), including Division D, Emergency Unemployment Insurance Stabilization and Access Act of 2020;
- Federal-State Extended Unemployment Compensation Act (EUCA) of 1970, as amended (26 U.S.C. § 3304 note);
- Section 903, Social Security Act (SSA), 43 U.S.C. § 1103;
- Section 3309, Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3309;
- UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued April 2, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390;
- UIPL No. 13-20, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020*, issued March 22, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634; and
- UIPL No. 12-09, *Extended Benefits Program – Temporary Changes made by the Assistance for Unemployed Workers and Struggling Families Act*, issued February 23, 2009, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2712.

7. Attachment(s).

- Attachment I: Statutory Language of Section 2103 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.
- Attachment II: Examples of the Impact of Section 2103 of the CARES Act

Statutory Language of Section 2103 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020

SEC. 2103. EMERGENCY UNEMPLOYMENT RELIEF FOR GOVERNMENTAL ENTITIES AND NONPROFIT ORGANIZATIONS.

(a) Flexibility in Paying Reimbursement.--The Secretary of Labor may issue clarifying guidance to allow States to interpret their State unemployment compensation laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest pursuant to such State laws.

(b) Federal Funding.--Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

“Transfers for Federal Reimbursement of State Unemployment Funds

“(i)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the transfer of funds during the applicable period to the accounts of the States in the Unemployment Trust Fund, by transfer from amounts reserved for that purpose in the Federal unemployment account, in accordance with the succeeding provisions of this subsection.

“(B) The amount of funds transferred to the account of a State under subparagraph (A) during the applicable period shall, as determined by the Secretary of Labor, be equal to one-half of the amounts of compensation (as defined in section 3306(h) of the Internal Revenue Code of 1986) attributable under the State law to service to which section 3309(a)(1) of such Code applies that were paid by the State for weeks of unemployment beginning and ending during such period. Such transfers shall be made at such times as the Secretary of Labor considers appropriate.

“(C) Notwithstanding any other law, funds transferred to the account of a State under subparagraph (A) shall be used exclusively to reimburse governmental entities and other organizations described in section 3309(a)(2) of such Code for amounts paid (in lieu of contributions) into the State unemployment fund pursuant to such section.

“(D) For purposes of this paragraph, the term ‘applicable period’ means the period beginning on March 13, 2020, and ending on December 31, 2020.

“(2)(A) Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the Federal unemployment account such sums as the Secretary of Labor estimates to be necessary for purposes of making the transfers described in paragraph (1).

“(B) There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in subparagraph (A) and such sums shall not be required to be repaid.”

Examples of the Impact of Section 2103 of the CARES Act

The following examples show how an employer that makes payments in lieu of contributions is impacted by Section 2103 of the CARES Act, specifically in relation to how the state administers its benefit charging provisions.

Example 1: State provides no relief from payments due in lieu of contributions.

Part (1)

(a) Compensation attributable to service with the entity	-\$1,000
(b) State relief from payments due in lieu of contributions	<u>\$ 0</u>
(c) Amount of payments due in lieu of contributions	\$1,000

Part (2) - This equals 50% of Part (1)(a)

<i>Amount of funds transferred from FUA for the claim Section 903(i)(1)(B), SSA (42 U.S.C. § 1103(i)(1)(B))</i>	\$ 500
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Part (3)

Payment made into state unemployment fund by entity	\$1,000
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Part (4)

<i>Reimbursement available to entity under Section 2103 Section 903(i)(1)(C), SSA (42 U.S.C. § 1103(i)(1)(C))</i>	-\$ 500
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Summary

(a) Net amount paid by entity Part (3) plus Part (4)	\$ 500
(b) Net result from Section 903(i)(1) transfers Part (2) plus Part (4)	\$ 0
(c) Net impact on state unemployment trust fund Part (1)(a) minus Part (3)	\$ 0

Example 2: State provides 50% relief from payments due in lieu of contributions.

Part (1)

(a) Compensation attributable to service with the entity	-\$1,000
(b) State relief from payments due in lieu of contributions	<u>\$ 500</u>
(c) Amount of payments due in lieu of contributions	\$ 500

Part (2) - This equals 50% of Part (1)(a)

<i>Amount of funds transferred from FUA for the claim Section 903(i)(1)(B), SSA (42 U.S.C. § 1103(i)(1)(B))</i>	\$ 500
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Part (3)

Payment made into state unemployment fund by entity	\$ 500
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Part (4)

<i>Reimbursement available to entity under Section 2103 Section 903(i)(1)(C), SSA (42 U.S.C. § 1103(i)(1)(C))</i>	-\$ 500
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Summary

(a) Net amount paid by entity Part (3) plus Part (4)	\$ 0
(b) Net result from Section 903(i)(1) transfers Part (2) plus Part (4)	\$ 0
(c) Net impact on state unemployment trust fund Part (1)(a) minus Part (3)	-\$ 500