Federal Register

Thursday,
October 9, 2003

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 604

Unemployment Compensation—Trust Fund Integrity Rule; Birth and Adoption Unemployment Compensation; Removal of Regulations; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIN 1205–AB33

Unemployment Compensation—Trust Fund Integrity Rule; Birth and Adoption Unemployment Compensation; Removal of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department) is issuing this final rule to remove the Birth and Adoption Unemployment Compensation (BAA–UC) regulations. Those regulations permitted an experimental opportunity for states to provide, in the form of unemployment compensation (UC), partial wage replacement for parents taking approved leave or otherwise leaving employment while caring for their newborns or newly-adopted children.

EFFECTIVE DATE: This final rule is effective November 10, 2003.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Office of Workforce Security, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4518, Washington, DC 20210. Telephone: (202) 693–3038 (voice) (this is not a toll-free number); 1–800–326–2577 (TDD); facsimile: (202) 693–2874; e-mail: *hildebrand.gerard@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview

On June 13, 2000, the Department published the BAA–UC Final Rule in the **Federal Register** at 65 FR 37210. The rule was codified at 20 CFR Part 604. It implemented an experimental opportunity for state agencies responsible for administering the Federal-State UC program to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. On December 4, 2002, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to remove the BAA–UC regulations in the **Federal Register**. (67 FR 72122 (December 4, 2002).) The NPRM invited the public to comment over a 60-day period, ending February 3, 2003. Comments were accepted by mail and electronic media.

The preamble to the NPRM contained a detailed explanation of the reasons for the removal of the BAA–UC regulations. In order to adequately respond to comments, and to eliminate the need for readers to refer to the NPRM for context, much of the material in the NPRM is repeated in this document.

B. Background on BAA–UC

Under BAA–UC, states were permitted, as part of a voluntary experiment, to amend their state UC laws to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. In qualifying for UC, the individual would not have to be able and available (A&A) for work in the sense traditionally used by the Department. Instead, parents of newborns and newly-adopted children would be viewed as meeting the federal A&A requirements (as implemented through state law) under the premise that the parents' long-term attachment to the workforce would be strengthened and promoted by the payment of UC, which would provide some financial support to accompany the introduction of a new child into the family.

As the Department noted during the final rulemaking in 2000, the BAA–UC experiment was ''a reversal of our position taken in 1997,'' when the Department advised a state that UC could not be used in this manner. (65 FR 37212 (June 13, 2000).) The BAA–UC experiment was described as ''part of an evolving interpretation of the federal A&A requirements that recognizes practical and economic realities.'' *(Id.)* Simply stated, the Department interpreted the A&A requirements in a new and different way that emphasized the individual's potential long-term attachment to the workforce. BAA–UC was intended to test whether individuals would be more attached to the workforce, even if their current separation from the workforce was a conscious decision on their part due to personal and family reasons relating to the birth or adoption of a child. Significantly, since the Department made the BAA–UC experiment available in 2000, no state has elected to participate.

Following a review of the BAA–UC Final Rule as part of a Department-wide review of all regulations, the Department announced, in the NPRM, that it proposed to remove the BAA–UC regulations because it had determined that ''the BAA–UC experiment is poor policy and a misapplication of federal UC law relating to the A&A requirements.'' (67 FR 72122 (December 4, 2002).) After thoroughly analyzing the A&A requirement, the Department concluded that ''A&A tests involuntary unemployment due to a continuing lack of suitable work'' and that the ''BAA–UC rule not only failed to recognize this, but is in fact contrary to the A&A requirement.'' (*Id.* at 72125.)

C. Effect of Repeal

To date no state has elected to participate in the BAA–UC experiment. Therefore, terminating the experiment will not result in any state withdrawing benefits it previously granted. The only effect of the removal of the regulations is that it arguably reduces state flexibility because a state could no longer elect to use its unemployment fund to pay BAA–UC. The Department's position on federal law requirements will revert to that in existence before publication of the BAA–UC rule. Thus, a state must require that to be eligible for UC an individual must, among other things, demonstrate current labor force attachment by meeting the A&A requirements. Each state remains free to create a paid family leave-type program using state moneys from sources other than the state's unemployment taxes deposited into its unemployment fund.

D. Policy Reasons for Repeal

The UC program is designed to provide temporary wage insurance for individuals who are unemployed due to lack of suitable work. This would generally not be the case for parents who would avail themselves of BAA–UC. Such parents would be out of work because they both initiated their separation from the workforce and are currently unavailable for work; they would have effectively withdrawn from the labor market for a period of time. To the extent that BAA–UC is based on labor force attachment, it is based on an assumption of increased *future* attachment to the labor force. Individuals who take approved leave when an employer is holding a job open for them are not available for that work or other suitable work. As a result, BAA–UC paid to these individuals would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. As such, it would be paid leave, which was not envisioned in the design of the UC program.

We again note that no state has enacted BAA–UC legislation. The limited flexibility provided under BAA–UC may be one factor. In 2002, California passed legislation (enacted Senate Bill 1661; Chapter No. 901) that contains features of BAA–UC, as well as many features beyond the scope of

BAA–UC. Notably, it authorizes payments beyond the scope of BAA–UC to certain individuals who take time off from work to care for a sick or injured child, spouse, parent or domestic partner as well as for foster care placements of a new child. The California law does not use its unemployment fund as a funding source, but instead uses employee contributions to its Temporary Disability Insurance fund. Similarly, the BAA–UC rule limits the types of eligibility conditions that may be imposed on individuals. For example, the BAA–UC rule at 20 CFR 604.20 lists industry, employer size, or the unemployment status of a family member as unacceptable eligibility factors.

Other flexibility issues have also been identified. For example, the Department expressed concern with a state bill that appeared to be close to enactment because it appeared to be inconsistent with Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). This bill would have made BAA–UC mandatory for all services performed in the state, except for services performed for certain governmental and nonprofit entities that could elect to participate. Because Section 3304(a)(6)(A), FUTA, requires that, with respect to these governmental and nonprofit services, UC must be paid ''in the same amount, on the same terms, and subject to the same conditions'' as UC payable on other services performed under state law, the Department advised the state that this legislation, if enacted, would be inconsistent with FUTA.

Finally, when the BAA–UC Final Rule was issued in 2000, state unemployment funds were in sounder financial condition than today. Since the publication of the rule, many states have seen a drastic decline in their unemployment fund balances, and most states are below our recommended 1.00 average high-cost multiple. (The average high-cost multiple indicates how many years of benefits a state has available under a recessionary scenario. A rating of 1.00 indicates the state has one year's worth of benefits on hand. The Department recommends a 1.00 high-cost multiple as a reasonable margin of safety to ensure fund solvency in periods of high unemployment.) Indeed, at the time BAA–UC was created, one of the policy arguments made for using a state's unemployment fund for BAA–UC was the claim that states had ''surpluses'' in their unemployment funds, which could be made immediately available to implement a BAA–UC experiment. The sudden and rapid decline in fund balances undercuts this argument and emphasizes the need for states to preserve the integrity of their unemployment funds for providing temporary income support to the involuntarily unemployed.

E. Legal Reasons for Repeal

The Department and its predecessors (the Social Security Board and the Federal Security Agency) have interpreted and enforced federal A&A requirements since the inception of the federal-state UC program. Although no A&A requirements are explicitly stated in federal law, the Department and its predecessors interpreted four provisions of federal UC law, contained in the Social Security Act (SSA) and FUTA, as requiring that states condition the payment of UC upon a claimant being able to and available for work. Two of these provisions, at Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a state's unemployment fund to the payment of ''compensation.'' Section 3306(h), FUTA, defines ''compensation'' as ''cash benefits payable to individuals with respect to their unemployment.'' The A&A requirements provide a federal test of an individual's continuing ''unemployment.'' (The meaning of ''unemployment'' in this statutory framework is discussed below.) The other two provisions, found in Section 3304(a)(1), FUTA, and Section 303(a)(2), SSA, require that compensation ''be paid through public employment offices.'' The requirement that UC be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to both an individual's ability to work and availability for work. These A&A requirements serve, in effect, to limit UC eligibility.

The basis for the federal A&A requirements was summarized in a March 11, 1939, letter from the Chair of the Social Security Board to the Governor of California, concerning whether the state could make payments with respect to temporary disability from its unemployment fund:

> The entire legislative history [of the UC titles of the original SSA] including the Report to the President of the Committee on Economic Security, the report of the House Committee on Ways and Means, the report of the Senate Committee on Finance, and the Congressional debates all indicate, either expressly or by implication, the compensation contemplated under [these titles] is compensation to individuals who are able to work but are unemployed by reason of lack of work. Several provisions of those titles are meaningful only if applied to State laws for the payment of such compensation. For example, the requirement that compensation be paid through public employment offices, or the requirement that States make [certain information] available to agencies of the United States charged with the administration of public works or assistance through public employment, are obviously without reasonable basis if applied to payments to disabled individuals. Many of the standards contained [in the experience rating provisions] are similarly without reasonable basis if applied to a State law for the payment of disability compensation.
>
> For these reasons, the Board is of the opinion that the [UC titles of the SSA] are applicable solely to State laws for the payment of compensation to individuals who are *able to work and are unemployed by reason of lack of work.* [Emphasis added.]

That involuntary unemployment due to lack of suitable work was the key test is supported by the Congressional Committee Reports:

> The essential idea in unemployment compensation* * * is the accumulation of reserves in time of employment from which partial compensation may be paid to workers who become unemployed and are unable to find work. * * * In normal times it will enable most workers who lose their jobs to tide themselves over, until they get back to their old work or find other employment without having to resort to relief. * * * [H. Rep. 615, 74th Cong. 1st Sess. 1935 Page 5.]
>
> The essential idea in unemployment compensation is the creation of reserves during periods of employment from which compensation is paid to workmen who lose their positions when employment slackens and who cannot find other work. Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed. * * * Payment of compensation is conditioned upon continued involuntary unemployment. Beneficiaries must accept suitable employment offered them or they lose their right to compensation. [S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 11.]
>
> For the great bulk of industrial workers unemployment compensation will mean security during the period following unemployment while they are seeking another job, or are waiting to return to their old position. [*Id.* Page 12.]

As illustrated by this history, the UC program is designed to provide temporary wage insurance for individuals who are unemployed due to lack of suitable work. *In order to be eligible for UC, an individual must be able to accept suitable work if it is offered, must be available to accept that work and must not refuse suitable work if offered. In other words, an individual may not voluntarily make him/herself unavailable for offered suitable work. Rather, a fundamental premise of the UC program is that benefits are only available to individuals who are involuntarily unemployed because there is no suitable work available to them.*

The federal A&A requirements implement this design by testing whether the fact that an individual did not work for any week was *involuntary* due to the *unavailability of work.* (Note that the A&A test looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it looks to why the individual is unemployed for a given week; it does not look to why the individual was separated from employment, except to the extent that the individual may have not been A&A for the week of the separation.) Since the BAA–UC experiment did not examine the federal A&A requirements from this perspective, it permits the payment of UC to individuals for whom suitable work may exist, thus contradicting the basic purpose of the A&A requirements.

The legislative history quoted above indicates that eligibility for UC is not based on the individual's personal need, except to the extent that his/her ''need'' is created by lack of suitable work. BAA–UC, however, extended eligibility for UC to parents based on considerations of compelling personal or family need regardless of whether there is a lack of suitable work. While the idea of providing financial assistance to parents or families experiencing birth or adoption may be admirable, it is not in keeping with the fundamental limitation of paying UC only to individuals who are unemployed due to lack of suitable work.

The legislative history also establishes a link between the public works programs in existence in 1935 and the UC program that bears on the A&A requirements. As noted in the Social Security Board's contemporaneous interpretation, an SSA provision (Section 303(a)(7)) requires that states make available to agencies of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of UC recipients. This requirement is predicated upon the understanding that UC recipients must be out of work due to lack of available work. It would make no sense to refer an individual, for whom work was available, to a public works program, which should be the employer of last resort. Senator Wagner, who introduced the SSA in the Senate, described the relationship between the proposed UC program and the government's public works programs (as well as public employment offices) as follows in the floor debate on the SSA:

> [Unemployment insurance] is not designed to supplant, but rather to supplement the public-works projects which must absorb the bulk of persons who may be disinherited for long periods of time by private industry. * * * A provision in the present bill requires that the Federal tax rebate shall be used to encourage a close connection between State job-insurance laws and unemployment-exchange offices. This provision emphasizes the fact that the [monetary] relief of existent unemployment is but a subordinate phase of the main task of providing work for all who are strong and willing. [79 Cong. Rec. 9284 (June 14, 1934).]

Thus, Congress intended the UC system to be subordinate to the main task of getting people back to work, which is, as noted above, implemented through the A&A requirements. BAA–UC is not consistent with this goal because it encourages parents to refuse available work.

Finally, as noted in the Social Security Board's letter, experience rating standards are meaningless if the test of involuntary unemployment due to lack of work is not used. Experience rating was originally established to ensure an equitable distribution among employers of the cost of the system, and to encourage employers to stabilize their work forces. (''Credits'' will be provided ''in the form of lower contribution rates * * * to employers who have stabilized their employment.'' (S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 14.)) BAA–UC contradicts the intent of experience rating because it allows payments based on an individual's own actions without regard to an employer's attempt to stabilize employment by offering suitable work to its current and former employees. Although experience rating was discussed in the BAA–UC final rulemaking, that discussion did not recognize that stabilization of employment is one of the primary purposes of experience rating.

II. Responses to Comments

A. Overview

About 6,200 pieces of correspondence commenting on the NPRM were submitted by the close of the comment period on February 3, 2003. Roughly 74 percent of the commenters favored removal of the BAA–UC rule while the remainder opposed removal. Some commenters addressed areas beyond the scope of the NPRM, which was the removal of the BAA–UC regulation. These commenters addressed such matters as reforms to the UC program, including the eligibility of part-time workers and other expansions of eligibility. Because these areas are beyond the scope of the proposed rulemaking, they are not discussed in this preamble. All timely comments were considered and all correspondence is included in the rulemaking record.

Most commenters were individuals, including many who identified themselves as human resource professionals. Comments were also received from employers; groups representing employer interests; groups representing the human resource community; labor unions and groups representing various other interests.

B. Reasons for Repeal

(1) Need for Paid Family Leave

Many commenters opposing removal of the rule argued that paid family leave is needed because of financial barriers to taking family leave. Some noted that the final rule creating BAA–UC cited research supporting this need and that the NPRM proposing removal did not refute this research. Some also noted that the NPRM did not refute research that paid family leave might have positive effects on workforce attachment. Others claimed the rulemaking would have a negative effect on family life.

This rulemaking does not address whether paid family leave is needed or desirable. Thus, there is no need to discuss the research discussed in the BAA–UC Final Rule. The purpose of this rulemaking is to address whether a state's unemployment fund is the appropriate vehicle to fund family leave payments. As will be discussed in the next section, the removal of the BAA–UC rule does not prohibit states from establishing paid family leave programs nor does it prohibit integrating administration of these programs into a state's UC administrative infrastructure. Because no state will be required to repeal an existing BAA–UC program, and because other avenues are available to states for creating a paid leave program, the Department does not believe the rule would preclude paid family leave or have a negative effect on family life. Rather, by preserving the integrity of state unemployment funds, this rule helps assure that adequate funds will be available to benefit workers unemployed due to lack of suitable work (and, as a result, the families of those workers) under the UC program.

(2) Flexibility

Many commenters opposing removal of the rule cited preservation of state flexibility as a reason for maintaining the rule. Commenters opposing removal argued that there is state interest in flexible approaches, including BAA–UC, as indicated by the number of

BAA–UC legislative proposals in the states. Several observed that ''in 2002, over 20 states had legislation introduced looking at this issue.'' One commenter argued that repeal would have a ''chilling effect'' on state legislatures' attempts to create paid family leave while others asserted that the Department made the BAA–UC experiment available only two years ago and many states have just begun the process of deciding whether to adopt it. It was also observed that the approach taken in California (discussed above) is not available in all states, while the UC system offers a long-standing, stable infrastructure available in all states.

The only lack of flexibility that will be caused by removal of the BAA–UC rule, however, is that states will not be able to use their unemployment fund moneys to pay workers who take approved leave, or otherwise leave employment, following the birth or placement for adoption of a child. States can use other means of funding paid leave programs. Protecting the integrity of unemployment fund moneys against use for non-UC purposes was a major area of concern for most commenters supporting removal. Among other things, these commenters characterized BAA–UC as a ''back door'' expansion of the Family and Medical Leave Act (FMLA); as putting ''at risk the safety net for unemployed workers;'' as ''illegal;'' and a ''misuse'' of the UC program. We agree that, as discussed elsewhere, BAA–UC fundamentally differs from UC.

While we acknowledge that California's approach is limited to those states with temporary disability programs, nothing in federal law prohibits a state from using the existing UC administrative infrastructure for other programs, providing it properly allocates the costs of administration between the UC and non-UC programs. We also note that one commenter, citing state interest in paid leave, indicated the innovation and flexibility that several states have already demonstrated in fashioning an ''at-home infant care'' program where ''low-income working parents receive subsidies'' from non-UC funds for caring for infants at home.

(3) Unemployment Fund Balances

Most of the commenters supporting removal of the BAA–UC rule expressed concern with the solvency of state unemployment funds. Several commenters opposing removal disagreed with our assessment of the solvency of state funds, which is that most states have seen a drastic decline in fund balances and most states are below the Department's recommended level of solvency. For example, one commenter indicated that even though reserves have dropped from pre-recession levels, the UC ''funding situation is exceptionally well positioned to handle the demand for benefits.'' We believe our characterization of the fund balance situation is accurate. Indeed, arguments that the funds are well positioned can be made only because Congress distributed $8 billion to states to assist in the payment of UC and for other purposes, in recognition that fund levels were dropping. (Section 209 of Public Law 107–147, March 9, 2002.) This infusion of funds on average increased state balances by about 20 percent at the time of the distribution and cannot be expected to recur in future downturns.

Some commenters opposing removal of the BAA–UC rule objected to including all states, even those with ''abundant reserves,'' in our solvency arguments. One commenter noted that the Department could establish a solvency standard as a condition of a state adopting or implementing BAA–UC, and indicated that several commenters on the NPRM proposing the BAA–UC experiment had suggested establishing such a standard. Other commenters criticized the Department for not taking action to stop state tax cuts which they claim precipitated solvency problems. However, as the Department noted in the final rule creating the BAA–UC experiment, it has ''never interpreted Federal law to require ''solvency''' of state unemployment funds. (65 FR 37216 (June 13, 2000).) Even if the Department had authority to mandate a solvency standard, we believe it would be poor public policy to create a federal standard that would require states to deny specific types of benefits based on fund balances.

(4) Whether Certain Situations Are Exceptions to A&A

Most commenters agreed with the Department's position that BAA–UC is inconsistent with the federal A&A requirements. Some also argued that there is an ''involuntariness'' requirement in federal UC law. Others disagreed, stating that the Department has allowed exceptions to A&A; that there are no specific A&A requirements in federal law; that Congress expressly rejected A&A requirements; and that federal law contains no ''involuntariness'' requirement (which is a basic underpinning of the federal A&A requirements).

Commenters addressed four situations—illness, jury duty, approved training, and temporary lay-offs ''as they relate to the A&A requirements. Generally, those favoring removal of the rule supported the Department's analysis that these situations are materially different from the BAA–UC experiment and could not be used as a basis for supporting BAA–UC. Opponents of removing the rule argued that these situations are approved ''exceptions'' to the A&A requirement.

The preamble to the BAA–UC Final Rule noted that these four situations affect individuals' ability ''to meet the stricter interpretations of the A&A requirements.'' (65 FR 37213 (June 13, 2000).) Although that preamble also noted that none of these situations ''precisely parallels the payment of BAA–UC, they do operate on the same premises: that situations exist in which it is important to allow a flexible demonstration of availability and in which attachment to the workforce can be demonstrated, and indeed strengthened, without requiring a current demonstration of availability.'' (*Id.*) However, the preamble also noted that ''paying BAA–UC is a departure from past interpretations.'' (*Id.*) The preamble of the NPRM (67 FR 72124–72125 (December 4, 2002)) noted that, unlike BAA–UC, none of these situations permit a voluntary withdrawal from the workforce. Instead, all of these situations require that an individual initially be A&A for work. These situations represent a practical response to situations in which it does not seem sensible to apply a strict application of A&A to an individual who is initially A&A for suitable work. In particular:

• *Illness.* The interpretation pertaining to illness applies only to individuals who initially meet the A&A requirements, but who then become ill *and* who do not refuse suitable work. Until work is refused, the unemployment is due to lack of work, which is what the A&A requirements are designed to test. The A&A requirements are preserved because the individual must initially demonstrate availability before the illness and must be held ineligible if s/he refuses suitable work offered during the illness.

• *Jury Duty.* The interpretation pertaining to jury duty applies only to individuals who initially meet the A&A requirements, but who are then called for jury duty. The unemployment continues to be due to a lack of work. The A&A requirements are preserved because the individual must initially demonstrate availability before being called for jury duty and because attendance at jury duty may be taken as evidence that the individual would otherwise be available for work. Even if

the individual has a job, the individual would have to report for jury duty.

• *Approved training.* Approved training is limited to situations where the state, not the individual, determines that short-term training will improve an individual's job prospects and is appropriate and necessary. In other words, the state has determined that the training enhances the individual's availability for work by making him/her qualified for a wider range of jobs. The Committee Report explaining this provision noted that Congress considered ''training in occupational skills * * * so important to the employability of the individual'' because ''training is frequently necessary for obtaining new employment.'' S. Rep. 91–752 U.S.C.C.A.N. 3606, 3625 (1970). Attendance at such training is accepted as evidence of availability for work. Indeed, if the individual refuses training, or fails to attend training, the states must evaluate eligibility under their A&A provisions.

• *Temporary lay-offs.* An individual on temporary lay-off must be available to work for the employer who laid-off the individual as soon as the employer again has work for the individual. While this requires an individual's availability for work with only one employer, it is nonetheless a test of whether the unemployment is due to lack of suitable work.

As we noted above, unlike BAA–UC, none of these situations permit a voluntary withdrawal from the workforce. Unlike BAA–UC, all of these situations contain some link to involuntary unemployment caused by a lack of suitable work.

Also, as the Department noted in the NPRM, none of these situations apply to BAA–UC. Under BAA–UC, unlike the illness exception, an offer of suitable work could be refused with no effect on eligibility. Unlike the illness and jury duty exceptions, no initial establishment of A&A was required to determine if the unemployment was linked to a lack of suitable work despite the individual's availability for work. Unlike approved training, BAA–UC did not address a situation where an individual is attempting to remedy his or her continuing unemployment; indeed, BAA–UC addressed a situation where a job is already available to the parent. Also, for approved training, the state must approve the training as increasing the individual's job prospects; no similar requirement existed for BAA–UC, with the result that increased attachment to the workforce for any one individual is highly speculative. Finally, unlike temporary lay-offs, BAA–UC did not require that the individual be available for at least one job; an offer of suitable work could be refused with no effect on eligibility. (One commenter noted a provision of a state's law that ''waived'' availability for individuals on temporary lay-off. In response, we note that, even under this provision, individuals must remain available for the job from which they were laid off.) These precedents differ from BAA–UC in that they do not permit an individual to *voluntarily remove* him/herself from being available for suitable work for a given week. BAA–UC, on the other hand, allowed payment to parents who have initiated their separation from the workforce and whose personal situation, rather than the lack of available suitable work, makes them unavailable for employment.

One commenter noted that individuals on temporary lay-off are ''not ''involuntarily [unemployed] due to lack of work'' since they voluntarily work in an industry that ''only provides work part of the year'' and that they are required to ''accept work from a single employer, regardless of what opportunities may otherwise exist for them in the job market.'' Similarly, the commenter noted work remains available for those on jury duty.

In response, we note that, as these situations indicate, the Department has been liberal and flexible in construing A&A. Concerning temporary lay-offs, it is sufficient that the individual be available for a single job opportunity. (Indeed, payment of UC to individuals on temporary lay-off allows employers to preserve their skilled workforces, which has been cited as one of the purposes of the UC program.) For jury duty, the Department believes it is unreasonable to deny UC to an individual, who has initially met the A&A requirement, because of a governmental compulsion to serve on a jury. If suitable work was available prior to the individual being called to serve on a jury, the individual would have been required to accept such work to meet the A&A requirement. Indeed, serving on a jury indicates an individual was otherwise available for work; even individuals who are employed must by law serve on juries and employers must permit them to serve.

We also note that, as a practical matter, it makes little sense to require individuals on temporary lay-off who intend to return to work with their former employers to be available for work that they will leave when their old job again becomes available. This creates unreasonable expectations for both the individual and the firms looking for new workers; indeed, most employers will not hire individuals on temporary lay-offs.

It does not follow that these situations support an argument that BAA–UC-eligible individuals are A&A. In all of the above situations an individual could be denied for failing to be A&A. Failure to attend jury duty or approved training will result in a denial for failure to be A&A; failure by an ill individual to accept suitable employment or failure to accept recall from a temporary lay-off will, at a minimum, result in a denial due to failure to be A&A. (We note that states also impose a disqualification for failure to accept suitable employment.)

Conversely, under BAA–UC, an individual could refuse work without any effect on current eligibility. As one commenter supporting removal noted, the BAA–UC rule was ''premised on the extraordinary assertion that ''able and available'' somehow can be interpreted to mean 'unavailable now but perhaps available in 3 months or later. * * * This interpretation * * * contradicts the plain meaning of the word 'available' by covering employed workers who take leave from employment *when the employer has work available* but the worker cannot, or does not wish to work.'' (Emphasis in original.)

(5) Voluntary Leaving and Other Situations

(a) Voluntary Leaving

Some commenters opposing removal of the rule argued that the Department had approved other exceptions to the A&A requirement. These commenters noted provisions of state UC laws that address voluntarily leaving a job to escape domestic violence, to escape sexual harassment, to follow a spouse, due to loss of child care, due to pregnancy or pregnancy-related disability, and due to the individual's illness. Others used these provisions as proof that there is no ''involuntariness'' requirement in federal law. Conversely, some commenters favoring removal of the rule argued that there is a specific ''involuntariness'' requirement.

The examples addressing voluntary leaving are distinct from the A&A requirement. The A&A requirement, a test of whether an individual is unemployed due to lack of suitable work, ''looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it does not require that states hold an individual ineligible based on the reason for separation from employment, except to the extent that the individual may have not been A&A

for the particular week of the separation.'' (67 FR 72124 (December 4, 2002).) There is, simply put, no federal requirement that the initial separation be involuntary for an individual to be eligible for UC; however, the individual must be A&A for suitable employment. Indeed, in the early days of the UC program, many state laws did not contain any provision addressing voluntary separations from employment, but they all had provisions requiring an individual to be A&A for suitable work.

An example may help explain how voluntary leaving provisions are distinct from the A&A requirements. If an individual left work to care for an ill child, certain states will not disqualify that individual for voluntarily leaving employment. However, the individual must still be A&A to be eligible for UC. If caring for the ill child prevents the individual from being available for a new job, the individual will be held ineligible for not meeting the state's A&A requirements because the individual is not involuntarily unemployed due to lack of suitable work. However, after the child no longer needs care and the individual becomes available for work, the individual may immediately commence collecting UC. Thus, this voluntary leaving provision does not affect the requirement that the individual must be A&A.

(b) Other Situations

One commenter noted a state law provision relating to short-time compensation (more commonly known as ''worksharing'') under which an individual would not be denied UC ''by reason of application of provisions relating to availability for work'' as evidence that exceptions to the A&A requirement exist. (Under ''worksharing,'' an employer and its employees agree that the employees will work a reduced work week in lieu of having some employees totally laid-off.) In response, we note that worksharing is expressly permitted by federal law as an exception to the A&A requirements, and that, like temporary lay-offs, the individual must still be available to work for his/her employer. Section 401(d)(1)(C) of Public Law 102–318 provides that, under worksharing, individuals ''are not required to meet the availability for work or work search test requirements * * *, but are required to be available for their normal workweek.''

The same commenter noted a state law that permits individuals with a history of part-time work to limit their availability to part-time work under certain conditions. This is consistent with federal law because those individuals are available for work. They are involuntarily unemployed due to lack of suitable work, which, in their case, is limited to part-time work.

(6) Test Requires Changes in State Law

Some commenters expressed concern that our basis for A&A—to test whether an individual's unemployment was involuntary due to lack of suitable work—could result in states having to repeal several current provisions of state law. For example, one commenter noted that the Department ''indicates its approval of exceptions [to the A&A requirement] such as temporary lay-offs, jury duty, and other situations that do not comply with the narrow rule the Department'' articulated in the NPRM. These provisions of state law were discussed in sections (2) and (3) above as being consistent with the Department's position on A&A. Therefore, the Department's basis for A&A will not require any states to repeal such provisions.

(7) Legislative History

Several commenters favoring removal agreed with the Department's analysis that the legislative history supports the A&A requirements. Some commenters opposing removal noted that no specific A&A requirements exist in federal law. One such commenter disagreed with our analysis of legislative history, noting that the ''lack of a federal availability requirement is confirmed not only by the plain language of FUTA and SSA, but by their legislative histories, which show that [Congress] expressly declined to impose specific federal requirements for availability'' and, further, that Congress could clearly display its intention to create eligibility requirements as it did when it required individuals claiming ''extended and emergency benefits to apply for and accept suitable work and to actively engage in such work.'' This commenter further noted that even if ''widespread involuntary unemployment'' was the original impetus for UC provisions of the 1935 SSA, ''nothing in federal [UC] law limits states's ability to provide more expansive coverage.'' In support of this, the commenter also cited a 1936 Social Security Board statement that ''It is desirable that a State law should be at least as broad in its coverage as the Federal act. * * * The State may, of course, go further and adopt a wider coverage.''

Although several members of Congress wrote in opposition to removing the BAA–UC rule, the Department's extensive review of the legislative history and the provisions of the original 1935 SSA and subsequent enactments indicate a Congressional expectation that individuals must be A&A for suitable work as a condition of benefit eligibility. While the Department agrees that FUTA and SSA do not explicitly set forth an A&A requirement, the Department must, in its supervisory role in the administration of these laws, make reasonable interpretations of the requirements set forth therein. Not all of the statutory requirements are unambiguous. Thus, although a requirement may not be explicit, it may be implicit, especially when viewed in the light of the legislative history. Further, although the states are free ''to provide more expansive coverage'' than that contemplated in these federal laws, they are nevertheless constrained by the requirements of this legislation as interpreted by the Department. The Department's construction of an implicit federal A&A requirement is reasonable based on the statutory language, the Social Security Board's contemporaneous interpretation of this language, the purpose of the UC program as set forth in the legislative history, and subsequent acts of Congress, discussed below.

In subsequent enactments, Congress has acted several times to reaffirm that UC is payable only to individuals who are able and available for work. When Congress first enacted a provision requiring the reduction of UC due to receipt of retirement pay, it explained that it was establishing a ''uniform rule'' to address the fact that some recipients of these retirement payments ''have actually withdrawn from the labor force,'' that is, are not A&A. (S. Rep No. 1265, 94th Cong. 2d Sess. 22 (1976).) In 1993, Congress required that states refer individuals likely to exhaust UC to reemployment services and deny UC to individuals who failed to participate in these services. (Sections 303(a)(10) and (j), SSA.) This reflected Congress's interest in helping UC claimants get back to work, especially those expected to have the hardest time returning to work quickly, and its willingness to deny UC to those individuals unwilling to take positive steps toward reemployment. Providing reemployment services to individuals who are not able or willing to accept employment (that is, who are not A&A) would waste resources on some while denying reemployment services to others who could benefit.

Congress has also created several extensions of UC to address ''widespread involuntary unemployment'' during economic downturns. In Public Law 91–373, it created the permanent federal-state

extended benefit program (EB) to pay benefits ''during periods of high unemployment.'' (H. Rep. No. 752, 91st Cong. 2d Sess. Page 6 (1970).) Indeed, one of the ''triggers'' for determining if a high unemployment period exists is the total unemployment rate, which includes only workers who have recently demonstrated their availability by looking for work. Several temporary extensions have also been enacted during periods of high unemployment, including the current Temporary Extended Unemployment Compensation program. When Congress extended the Emergency Unemployment Compensation program in the early 1990's, it noted that ''[m]any people who have lost their jobs are spending months, and months and months, sometimes a year or more seeking the next job.'' (H. Rep. 268 103rd Cong. 1st Sess. Page 2 (1993).) The purpose behind these programs was clearly to pay individuals unable to find employment because of economic downturns.

As noted above, one commenter stated that special eligibility requirements exist for the EB program. Specifically, an individual claiming EB must conduct a sustained and systematic search for suitable work and must submit tangible proof of this work search. Although many commenters appeared to believe that an active work search is a federal requirement for regular UC and/or is necessary component of availability, this is not the case. Though an active work search is one way for the individual to indicate availability, it is not the only way. An individual's active registration with the state's employment service or the individual's use of union hiring halls or private recruiting firms are all acceptable indications of availability absent an active work search by the individual. Aside from the EB provisions, federal law does not require an active search for work and, as a result, one state (Pennsylvania) does not require any work search for the regular UC program. Thus, the fact that Congress required an active search for work for the long-term unemployed is unrelated to whether an A&A requirement exists for the regular program.

We note that the work search requirement was not part of the original 1970 enactment of the EB program, having been added in 1980. Also, Congress completely suspended the EB work search requirement in the early 1990's when it extended the Emergency Unemployment Compensation program. This EB requirement also is not applicable to the Temporary Extended Unemployment Compensation Program. The effect of these suspensions was that state law eligibility requirements, including the state A&A requirements, were used for determining eligibility for programs that were designed to ameliorate widespread involuntary unemployment. In sum, the EB work search provisions do not support the argument that there is no federal A&A requirement.

We note that even Congressional prohibitions on the denial of UC assume that individuals must be available for work. When it passed a federal prohibition on denying UC solely due to pregnancy, Congress noted that an individual must be ''able to work * * * and be available for employment'' (H. Rep. No. 752, 91st Cong. 2d Sess. Page 19 (1970)) and that pregnant workers must continue to meet the ''availability for work and ability to work'' requirements. (*Id.* at 21.)

Finally, we note that Congress indicated its expectation that an ''able'' requirement existed for UC when it permitted states to withdraw certain employee contributions from their unemployment funds for the payment of ''cash benefits with respect to their disability.'' (Current Sections 3304(a)(4)(A), FUTA, and 303(a)(5), SSA.) Individuals who lose their jobs because of a disability, and who are unable to perform any work because of such disability, are not unemployed due to a lack of suitable work. They are unemployed due to the disability. Thus, explicit statutory authority was necessary to permit payment to disabled individuals from state unemployment funds.

(8) Supreme Court Decisions

Two commenters cited *New York Tel. Co.* v. *New York State Dep't of Labor*, 440 U.S. 519, 537 (1979). One commenter noted that ''[i]t is unclear whether states have authority to use UI [that is, UC] funds to provide family leave absent a Department of Labor regulation'' and then cited *New York Tel. Co.* for the proposition that ''states have broad discretion to legislate in the area of UI.'' The other commenter citing *New York Tel. Co.* noted that the U.S. Supreme Court has treated the absence of ''explicit prerequisites'' for UC eligibility ''as a strong indication that Congress did not intend to restrict the States' freedom to legislate in this area'' and that ''as the Supreme Court has noted, 'when Congress wished to impose or forbid a condition for compensation, it did so explicitly.' '' Therefore, this commenter argues, the omission of a specific availability requirement in FUTA or SSA ''reflects the absence of any congressional intent to condition eligibility for regular UI benefits on claimants' availability for work, as a matter of federal law.''

As a general rule, we agree that where Congress has not imposed specific requirements related to FUTA or SSA, states are free to operate and determine whether to impose their own requirements. However, the principle that Congress intended to grant states freedom to design their UC systems in areas in which it did not impose explicit requirements does not mean that the Department is precluded from making reasonable interpretations of the specific requirements of FUTA and SSA. We note that (1) the interpretation of an ''able and available'' requirement was made contemporaneously with the passage of SSA by the first agency with responsibility for interpreting SSA; (2) the Department has consistently interpreted FUTA and SSA to include a federal A&A requirement; and (3) *New York Tel. Co.* does not discuss either a specific federal A&A requirement or its absence. Therefore, the conclusion that the second commenter draws that the general language of *New York Tel. Co.* means that there is no federal A&A requirement or that it is beyond the authority of the Department to construe such a requirement is not a persuasive position.

The language in *New York Tel. Co.*, cited by the second commenter, was used by the Court to discuss its prior holding in *Ohio Bureau of Employment Services* v. *Hodory*, 431 U.S. 471, 482–483 (1977). In *Hodory*, the Court affirmed Ohio's denial of benefits to workers unemployed by labor disputes even if the unemployed workers were not strikers themselves. (*Hodory*, 431 U.S. at 482–83.) *Hodory* held that benefits could thus be denied under certain circumstances even when a worker is *involuntarily* unemployed. (*Id.*) *New York Tel. Co.* also involved the issue of workers involved in labor disputes. Unlike Ohio, New York permitted strikers to obtain UC after a certain period of time had elapsed. 440 U.S. at 523. The Court recognized that New York's law required all individuals seeking UC to be A&A, including strikers, as demonstrated by the Court's quote of that law, which required an individual's ''capability and readiness, but inability to gain work.'' (*Id.* at 523, n.2, emphasis added.) Thus, although the striking individual's initial separation may be voluntary, his/her continued unemployment is involuntary, unlike BAA–UC where the individual is not available for any work.

In the course of its discussion of *Hodory*, the Court in *New York Tel. Co.*

emphasized that ''the issue of public benefits for strikers became a matter of express congressional concern in 1935 during the hearings and debates on the Social Security Act'' and that Congress left that matter specifically to the states. (*Id.* at 542.) The Court remarked that ''[t]he drafters of the Act apparently concluded that such proposals [to prohibit States from providing benefits to strikers] should be addressed to the individual state legislatures without dictation from Washington.'' (*Id.* at 542–43.)

However, the Court also noted that not all matters concerning UC were left to the States. The Court recognized that ''[f]rom the beginning * * * the Act has required a few specific requirements for federal approval.'' (*Id.* at 542.) The Court explained that these requirements included those found in Section 3304(a)(5), FUTA, which provide, among other things, that a ''State may not deny compensation to an otherwise qualified applicant because he had refused to accept work as a strikebreaker, or had refused to resign from a union as a condition of employment.'' (*Id.*) The Court also noted that Section 3304(a)(5), FUTA, ''from the start had provided'' that ''compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions'' and then listed the specific conditions under which an otherwise eligible individual could refuse to accept new work.

The Court's recognition of certain universal UC requirements is further supported by its quotation from the Senate Report: ''Except for a few standards which are necessary to render certain that the State unemployment compensation laws are genuine unemployment compensation acts and not merely relief measures, the States are free to set up any unemployment compensation system they wish * * *.'' (*Id.* at 543, n. 42.) Allowing payment of BAA–UC from unemployment funds would transform a ''genuine unemployment compensation'' program into relief measures for those who have a job available and choose not to work and, thus, *New York Tel. Co.* does not in any way support allowing a state to do so.

In a later case, the Court recognized that there are limits on its broad statement about state discretion in *New York Tel. Co.* In *Baker* v. *General Motors Corp.*, 478 U.S. 621, 633 (1986), the Court, citing *Hodory* and the Report of the Committee on Economic Security, recognized that involuntary unemployment, although nowhere specifically mentioned in FUTA or the SSA, ''is thus generally a necessary condition to eligibility for compensation.'' Athough *Baker* did not specifically refer to the A&A requirement, that requirement is the test of ''involuntary'' unemployment under the FUTA and the SSA.

In sum, while we agree with the commenter's statement and the Court's observation that states are free to design their UC systems as they choose as long as those systems meet federal requirements, we disagree with the commenter's conclusion that this principle voids the A&A requirement. As we have shown, the federal A&A requirement is part of the foundation that makes a UC system a true UC system, not a relief system. The Department has the authority to interpret what the test of continued ''involuntary'' unemployment requires, so long as its interpretation is based on a reasonable construction of FUTA and SSA. As discussed above, the Department and its predecessors have consistently interpreted federal law to require that individuals must be A&A as a condition of receiving UC.

(9) Whether BAA–UC Is Paid Leave

In the BAA–UC Final Rule, the Department addressed what were termed ''misconceptions'' regarding BAA–UC. The Department noted that ''[m]any respondents referred to BAA–UC as 'paid FMLA' leave or 'paid family leave.' '' The Department responded that ''[a]lthough there may be many cases where parents of newborns and newly-adopted children will be simultaneously eligible for BAA–UC and leave under the FMLA, the two are legally unrelated to each other.'' (65 FR 37212 (June 13, 2000).) The Department also said that BAA–UC is ''not a new program.'' (*Id.*)

Although the Department did not ask commenters to address this distinction, the overwhelming majority did comment about FMLA and/or paid leave. As previously noted, many of those supporting removal of the rule described BAA–UC as a ''back door'' expansion of the FMLA, while many of those opposing removal cited the need for ''paid family leave'' and discussed BAA–UC as though it were paid family leave. In other words, despite the Department's explanation of differences between UC and paid leave, these commenters viewed BAA–UC as paid family leave.

As one commenter supporting removal noted, the purpose of UC ''is to compensate a worker who becomes temporarily unemployed when the employer no longer has suitable work available * * *'' Family leave, the commenter noted, citing Section 2(b)(1) of FMLA, is ''to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.'' This commenter concluded, ''Clearly, these are two entirely separate systems.'' Concerning the Department's rationale that BAA–UC might strengthen long-term attachment to the workforce, another commenter also noted that one ''could argue that paid leave programs for any purpose permitted by the FMLA might strengthen long-term attachment to the workforce,'' as might ''any leave policy'' and raised the concern that ''UC funds might be used not just for leave programs, but for other social benefits such as health or pension benefits.''

Thus, most commenters did not view the Department's attempts in the original BAA–UC rulemaking to distinguish between ''paid leave'' and BAA–UC as being sound. We agree. As we noted above, for individuals who were taking approved leave when an employer is holding a job open for them, BAA–UC would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. This makes the payment more in the nature of paid leave than UC. The payment is not made due to involuntary unemployment due to lack of suitable work, but due to the individual's decision to take time off from an existing job that is still available to the worker.

(10) Justification for Changes in Position

Commenters also addressed the soundness of the Department's justification for changing its position, both in the BAA–UC final rule and the NPRM. One commenter opposing removal argued, among other things, that repealing BAA–UC represents a ''radical shift in the agency's position [that] undermines [its] credibility. * * *'' Some commenters supporting removal took the opposite approach. One, for example, argued that the rulemaking creating BAA–UC ''failed to justify the Department's radical departure from over 60 years of precedent.''

We agree that the original BAA–UC rulemaking did not adequately justify a reversal of the Department's longstanding position. As previously noted, the BAA–UC rule failed to discuss why an A&A test exists, which is to test involuntary unemployment due to a continuing lack of suitable work. Due to this failure, the BAA–UC rulemaking resulted in a misapplication of federal law.

Executive Order 12866

The removal of 20 CFR part 604 is a ''significant regulatory action'' within the meaning of Section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this final rule was submitted to, and reviewed by, the Office of Management and Budget.

Before publication of the BAA–UC final rule (65 FR 37210 (June 13, 2000)), the Department prepared a Regulatory Impact Analysis which estimated that the rule would result in annual costs ranging from zero to $196 million, depending upon the number of states choosing to enact this voluntary program. (To establish the upper end of the cost range, the Regulatory Impact Analysis grouped the states into size groups—large, medium and small—and used the extent of state enactment of five representative types of UC benefit expansions (alternative base period, unrestricted good cause for voluntary quits, short-time compensation, dependents' allowances, and supplemental (or ''additional'') benefits) as an indicator of the likelihood of state enactment.) Since publication of the BAA–UC final rule, no state enacted BAA–UC, which means that no benefits have been paid, nor administrative costs expended. Removing the BAA–UC rule ends the possibility that BAA–UC and its associated administrative costs will be paid out of state unemployment funds with the result that the estimated costs would not be incurred. Therefore, the removal of the rule results in no costs or cost savings and potentially prevents costs from being incurred in the future. Because the Department expects the immediate economic impact of removing the rule to involve no costs, this regulatory action is unlikely to have an annual effect on the economy of $100 million or more and, consequently, is not ''economically significant'' within the meaning of Section 3(f)(1) of that Executive Order. No commenter claimed that there were any costs associated with removing the BAA–UC rule.

Finally, we have evaluated this regulatory action and find it consistent with the regulatory philosophy and principles set forth in Executive Order 12866. Though this action removes authority for states to fund a form of family leave from their unemployment funds, states continue to have flexibility to provide paid family leave from other funding sources. Further, because no state has enacted BAA–UC, no state is adversely affected in a material way by having to dismantle such an experiment. Finally, this action removes a regulation and imposes no alternative regulatory requirements.

Paperwork Reduction Act

This regulatory action contains no information collection requirements.

Executive Order 13132

We have reviewed this regulatory action in accordance with Executive Order 13132 regarding federalism. This Executive Order requires agencies, when formulating and implementing policies that have federalism implications, to the extent possible, to refrain from limiting state policy options, to consult with states before taking any action which would restrict states' policy options, and to take such action only where there is clear statutory and constitutional authority and the presence of a problem of national scope. The UC program is a matter of national scope, as evidenced by existing federal legislation, which limits state flexibility in certain areas. As discussed above, the Department has the authority to interpret what the test of continued ''involuntary'' unemployment requires, so long as its interpretation is based on a reasonable construction of FUTA and SSA. Policies with federalism implications are those with substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Because this regulatory action would limit state policy options, by eliminating authority to pay for family leave out of unemployment funds, we consulted with organizations representing state elected officials, who did not object to removal of the BAA–UC rule.

Executive Order 13175

This regulatory action does not have ''substantial direct effects on one or more Indian tribes, or the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' It affects primarily states and state agencies.

Executive Order 12988

This regulatory action has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The proposal, a mere one sentence, removes 20 CFR part 604. Given its brevity, it is not likely to lead to litigation resulting from drafting errors or ambiguities.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and does not include any unfunded federal mandate.

Regulatory Flexibility Act

This regulatory action will not have a significant economic impact on a substantial number of small entities. This action affects states and state agencies, which are not within the definition of ''small entity'' under 5 U.S.C. 601(6). Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

We certify that this regulatory action has been assessed in accordance with Section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. As discussed earlier in this preamble, we conclude that this action would not adversely affect the well-being of the nation's families. No state has enacted BAA–UC; consequently no families would experience a termination of BAA–UC benefits. Though the rule withdraws authorization for states to amend their UC laws to pay for such benefits from the state's unemployment fund, paid family leave could be provided from other funding sources. This rule preserves the availability of state unemployment funds for times when workers, who may support families, are unemployed due to lack of work.

Congressional Review Act

Consistent with the Congressional Review Act, 5 U.S.C. 801, *et seq.*, we will submit to Congress and the Comptroller General of the United States, a report regarding the issuance of this Final Rule prior to the effective date set forth at the outset of this document.

OMB has determined that this rule is not a ''major rule'' as defined by the Congressional Review Act (Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996). It is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of United States-based companies to compete with foreign-based companies in domestic and export markets.

Catalogue of Federal Domestic Assistance Number

20 CFR Part 604 is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 604

Unemployment compensation.

Signed at Washington, DC on October 3, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Words of Issuance

■ For the reasons set forth in this preamble, and under the authority of 42 U.S.C. 503(a)(2) and (5) and 1302(a); 26 U.S.C. 3304(a)(1) and (4) and 3306(h); Secretary's Order No. 4–75 (40 FR 18515); and Secretary's Order No. 14–75 (November 12, 1975), Chapter V, Title 20, Code of Federal Regulations, is amended by removing part 604.

[FR Doc. 03–25507 Filed 10–8–03; 8:45 am]

BILLING CODE 4510–30–P