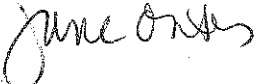


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| EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210 | CLASSIFICATION Unemployment Insurance |
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| | DATE June 18, 2012 |

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 22-12

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES
 Assistant Secretary 

SUBJECT: Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012

- 1. Purpose.** To provide an overview of all of the provisions in Subtitle D of Title II of the Middle Class Tax Relief and Job Creation Act of 2012 that concern short-time compensation or “worksharing” programs, and to provide guidance to the state agencies about the new definition of short-time compensation in Federal unemployment compensation law, the transition period for states currently administering a short-time compensation program, and 100% Federal reimbursement of certain state short-time compensation benefits.
- 2. References.** Section 194 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Public Law (Pub. L.) 97-248); Section 401 of the Unemployment Compensation Amendments of 1992 (Pub. L. 102-318); Title II of the Middle Class Tax Relief and Job Creation Act of 2012, (Pub. L. 112-96), The Layoff Prevention Act of 2012 (Subtitle D of Title II of Pub. L. 112-96); Federal Unemployment Tax Act (FUTA; 26 U.S.C. 3301 et seq.); Section 303(a)(5) of the Social Security Act (SSA); Sections 414(i) and (j) of the Internal Revenue Code (IRC); and Unemployment Insurance Program Letter (UIPL) No. 45-92.
- 3. Background.** Short-time compensation (STC), also known as worksharing or shared work programs, preserves employees’ jobs and employers’ trained workforces during disruptions to a firm’s regular business activity by reducing hours of work for an entire group of affected employees rather than by laying off some employees while others continue to work full time. STC provides a portion of a weekly unemployment compensation (UC) payment to certain individuals whose workweeks have been reduced. STC cushions the adverse effect of the reduction in business activity on workers and ensures that these workers will be available to resume prior employment levels when business demand increases.

Initially, states were authorized to implement temporary STC programs using funds from their accounts in the Unemployment Trust Fund (UTF) in the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). The Unemployment Compensation Amendments of 1992 (Pub. L. 102-318) added permanent statutory authority for states to fund STC from the UTF and established certain requirements in its definition of an STC program.

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| RESCISSIONS None | EXPIRATION DATE Continuing |
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On February 22, 2012, the President signed into law Pub. L. 112-96, the Middle Class Tax Relief and Job Creation Act of 2012 (the Act), which contains many provisions concerning the UC program. This issuance provides initial guidance on the provisions in Subtitle D of Title II of the Act, the Layoff Prevention Act of 2012 (hereinafter all references to sections are to the Act) pertaining to STC. Subtitle D does the following:

- a. Modifies the definition from that in Pub. L. 102-318 of the term “short-time compensation” by adding a new Section 3306(v), FUTA. States are not required to enact an STC program. However, state STC programs must operate consistent with the provisions in the new subsection (v). Subtitle D also provides a transition period for states with STC laws to conform to the new definition and requirements. (Section 2161)
- b. Provides 100 percent Federal reimbursement of certain STC benefit costs paid by states operating an STC program under their own law consistent with the provisions of Section 3306(v), FUTA, for up to 3 years. Subtitle D also provides a transition period during which states operating STC programs before enactment of Subtitle D may qualify for reimbursement of benefit costs if their laws do not conform to the requirements in Section 3306(v), FUTA. (Section 2162)
- c. Allows states without STC programs meeting the new definition in Section 3306(v) to enter into an agreement with the Secretary of Labor (Secretary) to operate a Federal STC program for up to 2 years, with the state receiving reimbursement for one-half of the amount of STC paid to individuals under the agreement and the employer paying the remaining one-half of STC benefit costs. (Section 2163)
- d. Provides for grants to states for the implementation or improved administration of, or promotion and enrollment in, STC programs meeting the new definition. (Section 2164)
- e. Directs the Secretary, after consultation with stakeholders, to develop model legislative language, guidance, and reporting requirements for use by states in developing and enacting STC programs. (Section 2165)
- f. Requires the Secretary to submit a final report on the implementation of the provisions of Subtitle D no later than 4 years after the date of enactment. (Section 2166)

As required by statute, Section 2165(c), Pub. L. 112-96, the Department of Labor (Department) consulted with employers, labor organizations, state workforce agencies, and other program experts about model legislative language, guidance, and reporting. A Notice of Listening Sessions on Implementation of Unemployment Insurance Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) was published at 77 Federal Register 16074 (March 19, 2012) and two listening sessions were held. Recordings of these sessions are at <https://www.workforce3one.org/view/5001206850055897580/info> and <https://www.workforce3one.org/view/5001206850373490082/info>.

4. **Definition of Short-Time Compensation Program.** The term “short-time compensation” is defined in new subsection (v) of Section 3306, FUTA, which became effective on the date of enactment, February 22, 2012. States are not required to enact an STC program into law; however, states may not operate an STC program that does not conform to this definition, except as provided in Section 2161(a)(3), which is discussed further in section 5 of this guidance. A short description of the elements of this definition in each numbered paragraph of Section 3306(v), FUTA, and how they compare to the elements of the prior definition of “short-time compensation” in Federal law is provided below.

a. *“(1) the participation of an employer is voluntary;”*

This is the same as prior law. Employer participation has always been voluntary in STC programs.

b. *“(2) an employer reduces the number of hours worked by employees in lieu of layoffs;”*

This is a modification from the prior definition. Previously, the STC definition required a reduction in hours worked by employees in lieu of temporary layoffs. The removal of the word temporary may enable a state UC agency to approve more applications by employers to participate in an STC program since the employer is no longer required to reasonably expect that the layoff be temporary. The use of the word “layoffs” means that the employing unit affected must consist of at least two workers.

c. *“(3) such employees whose workweeks have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the State to be appropriate (but in no case more than 60 percent), are not disqualified from unemployment compensation;”*

This is a modification from prior law.

Consistent with prior law, employees participating in STC must not be disqualified from UC on account of their STC participation.

However, prior law required a reduction in the workweek of at least 10 percent. No maximum percentage was provided under the prior law. Federal law now establishes both a minimum (10 percent) and maximum (60 percent) percentage by which individuals’ workweeks may be reduced. The states may determine the range as long as it falls within those parameters.

d. *“(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would otherwise be payable to the employee if such employee were unemployed;”*

This is the same as prior law. STC weekly benefit amounts have always been defined

as a proportion of the UC weekly benefit amount payable for a week of total unemployment equivalent to the proportion of the workweek that had been reduced. Thus, individuals must be monetarily eligible for UC and have remaining entitlement to UC in order to receive an STC weekly benefit amount.

- e. *“(5) such employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency;”*

This is the same as prior law.

- f. *“(6) eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Investment Act of 1998) to enhance job skills if such program has been approved by the State agency;”*

This is an expansion of the requirement in prior law because it permits the state UC agency to approve STC plans providing for both employer-sponsored training and Workforce Investment Act (WIA) training to improve job skills. Previously, only employer-sponsored training could be included in an STC plan. The addition of WIA training should provide more training opportunities to STC participants. As under previous law, any training must be approved by the state agency.

- g. *“(7) the State agency shall require employers to certify that if the employer provides health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) or contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program;”*

This is a new requirement, although many states already have STC laws that contain similar provisions. The employer may not reduce the health or specified retirement benefits to individuals participating in the STC program. However, this prohibition on reductions does not apply if a reduction (described in more detail below) in such health and specified retirement benefits also apply to employees not participating in STC.

Health Benefits. As part of any application to participate in a STC program, an employer that provides health benefits to an employee who has a reduced workweek under the employer’s STC plan must certify that such benefits will continue to be provided to the employee under the same terms and conditions as though the employee’s workweek were not reduced.

For purposes of this certification, employees participating in the employer’s STC plan must be allowed to maintain coverage under the same terms and conditions as

employees not participating in the STC plan. If coverage under the group health plan requires employee contributions, employees who participate in the STC plan may still be required to make such contributions in order to maintain their coverage.

Notwithstanding the above, a change in health benefits applicable to employees who are not participating in the STC plan may also apply to employees who participate in the STC plan.

Retirement Plans. As part of any application to participate in a STC program, an employer that maintains a retirement plan (either a defined benefit plan or a defined contribution plan) for an employee who has a reduced workweek under the employer's proposed plan must certify that benefits (in the case of a defined benefit plan) and contributions (in the case of a defined contribution plan) will continue to be provided to the employee under the same terms and conditions as though the employee's workweek were not reduced.

For purposes of this certification, employees participating in the employer's STC plan must be allowed to maintain coverage in the retirement plan under the same terms and conditions as employees not participating in the STC plan. The hours that were reduced under the STC plan must be credited for purposes of participation, vesting, and accrual of benefits as though the workweek had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation. Notwithstanding the above, a reduction in benefits under a defined benefit plan or a reduction in contributions under a defined contribution plan, applicable to employees who are not participating in the STC program may also apply to employees who participate in the employer's STC plan.

- h. *"(8) the State agency shall require an employer to submit a written plan describing the manner in which the requirements of this subsection will be implemented (including a plan for giving notice, where feasible, to an employee whose workweek is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation and such other information as the Secretary of Labor determines is appropriate;"*

This is a new requirement, although state laws generally require employers to submit an application to participate in the STC program. However the requirement that the state law specify that any STC application will require the employer to specify how the plan meets the new requirements of Section 3306(v), FUTA, is generally new for states. Of particular note, the plan will have to specify how workers will be notified of the STC plan in advance, if feasible, and provide an estimate of the number of workers who would be laid off if the employer does not participate in STC. If advance notice is not feasible, the Department requires that the application explain why it is not feasible. If the affected unit is covered by a collective bargaining agreement, it will be sufficient to provide an explanation in the application of how notification to the bargaining agent will be provided.

- i. *"(9) the terms of the employer's written plan and implementation shall be consistent*

with employer obligations under applicable Federal and State laws; ...”

This is a new requirement. Now, state STC law must require the employer to attest, as part of its STC application, that participation in the STC program is consistent with the employer’s obligations under state and Federal law.

- j. *“(10) upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program.”*

This is a new provision intended to give states the flexibility to include, upon state request and approval by the Secretary, additional STC requirements. Many state STC laws currently contain additional requirements for employer or employee participation in the STC program. We will issue additional guidance explaining the process by which states may request that the Secretary approve any additional provisions other than those specifically included in Section 3306(v), FUTA.

- 5. **Transition Period for State STC Laws to Conform to New Definition.** While the new definition of STC in Section 3306(v), FUTA, became effective on February 22, 2012, Section 2161(a)(3) provides for a transition period for states administering STC programs on that date. The term “administering” means the state’s STC law is in effect, and the state agency responsible for administering the STC program has established operating guidelines and has informed employers and workers about the STC program, regardless of whether any STC payments have been made. If a state’s law cannot be administered consistent with this new definition, the state may continue to administer its current STC law until the earlier of the effective date of state law changes conforming to this new STC definition or the “date that is 2 years and 6 months after the date of the enactment of this Act,” August 22, 2014.

Thus, if any state that had not been administering an STC program on February 22, 2012, enacts a law providing for an STC program after that date, the enactment must conform to the definition in Section 3306(v), FUTA. In addition, a state administering a non-conforming STC program on February 22, 2012, must amend its law to conform to Section 3306(v), FUTA, effective no later than August 22, 2014, in order to continue operating its STC program after that date.

- 6. **Temporary Reimbursement of Eligible STC Costs Paid Under State Law.**

- a. In General. Section 2162 provides for Federal reimbursement of state STC benefit costs. Reimbursement is available for up to 156 weeks to states whose STC laws conform to the definition in Section 3306(v), FUTA. States with current STC laws that do not conform to this definition may get reimbursement only during the two and one-half year transition period (130 weeks) discussed in subsection b below. Reimbursements are available for weeks of unemployment beginning after the date of enactment (in most states, the week beginning February 26, 2012) until the week of unemployment ending on or before the date that is 3 years and 6 months after the date of enactment, August 22, 2015 (in most states, the week of unemployment ending August 22, 2015).

In order to qualify for reimbursement of STC costs paid under state law, the state's STC provisions are not required to be permanent. However, in order to qualify for a grant, as explained in section 9 below, a state's STC law may not be subject to discontinuation.

- b. Transition Period for States Administering State STC Laws on the Date of Enactment. For states whose laws do not conform to Section 3306(v), Federal reimbursement is available if their STC programs had been administered on or before February 22, 2012. Reimbursement is available during the transition period described in section 5 above (up to 2 years and 6 months—in most states, until the week of unemployment ending on August 23, 2014). If at any point during the transition period the state enacts conforming legislation, it then becomes eligible for the full 156 weeks of reimbursement available until August 22, 2015. For weeks of unemployment beginning after August 22, 2014 (in most states, the week beginning August 24, 2014), there will be no reimbursement of STC costs if a state law does not conform to Section 3306(v), FUTA.
- c. States Transitioning from Operating a Federal STC Program Under Agreement with the Secretary to a State STC Program Eligible for 100 percent Reimbursement. Section 2163 provides 50 percent Federal reimbursement of STC benefit costs for states paying Federal STC benefits under an agreement with the Secretary. (See section 8 of this UIPL.) Any state that operated a Federal STC program under an agreement and transitions to a state STC program may receive the 100 percent reimbursement for state STC benefits paid with respect to weeks of unemployment beginning after the effective date of a new state STC law conforming to Section 3306(v). However, the combined number of weeks of reimbursement under Section 2163 and Section 2162 may not exceed 156.
- d. Limitations on Reimbursement. The statute establishes two limitations on reimbursement of state STC costs. First, no reimbursement will be made when STC is paid to an individual during a benefit year in an amount that exceeds 26 times the amount of regular UC (including dependents' allowances) for a week of total unemployment. Second, no reimbursement will be made for payment of STC to an individual if the individual is employed by the employer on a seasonal, temporary or intermittent basis, as defined under state law. This limitation does not include individuals employed on a part-time basis whose hours are reduced under an STC plan.

If state law does not include definitions of these terms, states will use the following for determining which state STC benefits are subject to 100 percent Federal reimbursement:

Seasonal Employment: Employment with an employer who experiences at least a 20 percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the

previous 3 years as reported to the state agency, and/or employees are hired to work on a temporary basis by employers that need extra help during a particular season.

Temporary Employment: Employment where an employee is expected to remain in a position for only a limited period of time and/or is hired by a temporary agency to fill a gap in an employer's workforce.

Intermittent Employment: Employment that is not continuous but may consist of periodic intervals of weekly work and intervals of no weekly work.

- e. Charging of STC Benefits. Federal law permits states to reduce employers' state unemployment tax rates from a "standard" rate only on the basis of their "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk" (Section 3303(a), FUTA). As states generally measure employers' experience with unemployment via UC payments made to their former employees, states charge UC benefits, which includes STC, to employers' accounts when unemployment is in the direct or indirect control of employer, or when the unemployment is due to general economic, trade, or other business reasons. Similarly, Federal law provides that employers who opt to reimburse UC benefits, which includes STC, rather than pay experience-rated state unemployment taxes, must reimburse "the amounts of compensation attributable under the State law to such service" (Section 3309(a)(2), FUTA). Therefore, the Department requires states to require reimbursing employers to reimburse the STC costs attributable to the service for these employers.

The intent of the "experience rating" requirement in Federal law is to equitably allocate the cost of UC among employers, with employers who cause more unemployment generally paying higher state unemployment taxes than employers who cause less unemployment. Even though employers participating in STC programs under section 2162 of the Act are directly causing unemployment (or STC payments are attributable to service with the employer) by reducing the hours their employees work, because the associated UC costs are being reimbursed by the Federal government by an amount equal to 100 percent of the amount of STC paid to participating employees, states may (if permissible under state law) choose not to charge (or not to require reimbursement of) STC payments that are subject to the 100 percent reimbursement by the Federal government. States choosing to charge (or require reimbursement of) the benefits may not, however, apply special rules to these STC payments, but must follow the provisions of state law applying to all charges (and reimbursements) for STC payments. When the 100 percent Federal reimbursement ends, states must again apply their charging provisions to STC payments.

As a reminder, if a state permits payment of STC in excess of 26 times the amount of regular compensation payable for a week of total unemployment, or to individuals employed by a participating employer on a seasonal, temporary, or intermittent basis, those STC payments will not be reimbursed. Accordingly, the state must charge the employer for these benefits (or require reimbursement) consistent with state law.

Further, all STC payments made by a state for a week of unemployment for which 100 percent Federal reimbursement is not made must also be charged (or reimbursed) consistent with state law.

When considering whether or not to relieve employers from charging (or reimbursement) if permissible under state law, states should take into consideration the potential effect on the solvency of their accounts in the Unemployment Trust Fund (UTF) and, for states that are receiving advances to pay benefits, the additional advances and associated interest payments that may result. In addition, as the schedule of state unemployment tax rates that is effective in a year is typically based on the balances in states' accounts in the UTF, states should be mindful that this decision may also impact the schedule of taxes that becomes effective in any given year.

- f. Agreements. In order to receive reimbursement for eligible STC payments made under state law, each state that may qualify for reimbursement must enter into an agreement with the Secretary that describes the responsibilities of the parties consistent with Section 2162 and includes a description of the estimation methodology that will be used to provide funds to states at the beginning of each month (see Attachment II). This agreement may be signed by the Administrator of the state agency responsible for administering the state UC program, if the Administrator has the authority under state law to do so.

Each potentially qualifying state must also sign an addendum to the Fiscal Year 2012 Annual Funding Agreement for the UI Program (see Attachment III). This addendum is also applicable to other UI-related provisions in Pub. L. 112-96. The addendum must be signed by the governor of the state, or the governor's designee.

States planning to enter into agreements for reimbursement of state STC benefit costs should contact the appropriate Regional Office to request copies of these agreements that have been signed by the Secretary before getting signatures from the appropriate state officials. Both signed agreements must be submitted via email to the following address: STC_Applications@dol.gov.

- g. Financial Information: Payments to States for State STC Benefit. Section 2162 provides for 100 percent Federal reimbursement of the amount of STC paid to individuals under state STC laws, subject to the limitations in subsection d. above. Eligible reimbursements for state STC benefit costs will be provided to each qualifying state on a monthly basis. At the beginning of each month, estimated state STC benefit payments eligible for reimbursement, taking into account surpluses or shortfalls from prior months' allocations, will be made available in the Payment Management System (PMS) for state drawdown. Funds drawn down must be deposited into a state's account in the UTF or Benefit Payment Account where Cash Management Improvement Act of 1990 (CMIA) requirements apply. After the agreements cited in subsection f. are signed, the first payment will be made available in the PMS in an amount equal to the estimated eligible state STC benefit payments for weeks of unemployment beginning after the date of enactment through the month

following the month in which this guidance is issued. Estimates for eligible amounts needed for any month will generally be equal to state STC amounts eligible for reimbursement in the most recent month for which data is reported on the ETA 2112 report, adjusted for any excess or shortfall provided in prior months for which actual data available are above or below that month's allocation. The Grant Officer will assign a separate line on the UC program notices allowing for issuance of obligational authority for state STC benefit funds, and a separate sub-account for STC will be established in the PMS for states to draw down reimbursements of state STC benefit funds. This will function identically to benefit funding for Trade Readjustment Assistance and Wage Insurance benefits.

Funds should be withdrawn from the PMS as needed, in compliance with CMIA requirements, to meet state STC benefit expenses. Any deposits to state accounts in the UTF of previously disbursed STC benefits eligible for Federal reimbursement should be communicated to the Bureau of Public Debt as a credit to "State UI Withdrawal". An offsetting reduction to "net UI [unemployment insurance] Benefits" reported on the ETA 2112, line 31, column F should accompany such credits. This would effectively reverse the state transactions involving funds previously withdrawn and disbursed for STC benefits.

7. Reporting.

- a. ETA 2112. (OMB No. 1205-0154). Transactions involving STC benefits reimbursed with Federal funds must be reported in the aggregate on the electronic ETA 2112 report. Information reflecting these STC transactions must be reported as follows:
 - 1) **Line 23b, Short-Time Compensation - Federal.** Report on line 23b, column F the amount of Federally reimbursed STC funds deposited into the state's benefit payment account.
 - 2) **Line 31, Net UI Benefits.** Line 31 should exclude all state STC benefit payments paid for using Federal funds. When STC payments issued in previous months are reimbursed with Federal funds, the amount of Federal reimbursement should be netted out of line 31. STC benefits paid for using regular state UTF funds should continue to be included on line 31.
 - 3) **Line 42b, Short-Time Compensation - Federal.** Report on line 42b, column F the net amount of state STC benefits paid that are eligible for Federal reimbursement. States are to report gross STC benefit disbursements in column F regardless of whether amounts of Federal tax withholdings are applied to STC benefit payments.
- b. ETA 5159. (OMB No. 1205-0010). The STC-specific report form for the ETA 5159 has one additional cell that must be reported. This cell describes the number of employers with STC agreements.

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

8. **Temporary Federal STC Programs Operated Under Agreement with Secretary.** Section 2163 permits a state to enter into an agreement with the Secretary to operate a Federal STC program. The payment of STC under this provision is not based on state UC law but upon an agreement with the Secretary, similar to how states pay Emergency Unemployment Compensation. This allows a state's employers and workers to benefit from an STC program even if that state's law does not presently provide for the payment of STC. Below is a brief summary of the applicable statutory requirements. Additional guidance on this provision is forthcoming.

The authority for a state to enter into an agreement with the Secretary to pay Federal STC expires no later than "the date that is 2 years and 13 weeks after the date of enactment of this Act," that is, May 24, 2014. States may pay STC benefits under this temporary Federal program for no more than 104 weeks. As noted above in section 6(c), states are permitted to be reimbursed for state STC costs for up to 156 weeks. However, it is important to note that the number of weeks that a state pays Federal STC benefits will result in a reduction in the total number of weeks the state may receive reimbursement for STC payments made under its state law. Thus, if the state pays Federal STC by agreement for 20 weeks, and subsequently enacts an STC law meeting the requirements of Section 3306(v), FUTA, the 20 weeks of Federal STC paid through agreement is deducted from the maximum of 156 weeks of 100 percent reimbursement of state STC costs.

While it is voluntary for a state to operate it, a state's temporary Federal STC program must conform to the definition of an STC program in Section 3306(v), FUTA. The state or the Department may terminate the agreement with 30 days' advance written notice.

Under the temporary Federal program, STC payments to an individual in a benefit year may not exceed 26 times the amount of regular UC payable to such individual for a week of total unemployment. In addition, states may not pay STC to individuals employed on a seasonal, temporary, or intermittent basis.

Employers must pay one-half of the benefit costs of an employee participating in the temporary Federal STC program. Amounts collected from employers under this provision must be deposited in the state's unemployment fund and may not be used for calculating the employer's contribution rate. Section 2163(b)(3) requires employers to reimburse the state for one-half of these STC costs, and provides that the reimbursement "shall be deposited in the State's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate [that is, experience rate]" under section 3303(a)(1), FUTA. Accordingly, this payment by the employer is a reimbursement for Federal STC benefits and may not be credited to the employers' reserve or applied as a voluntary contribution. The Federal government will reimburse the state for the remaining one-half of Federal STC benefit costs and for administrative expenses associated with operating this Federal STC program under

the Annual Funding Agreement Addendum.

9. **Availability of and Criteria for Grants for State STC Programs.** Grants for the implementation or improved administration of an STC program, or for promotion and enrollment of employers in an STC program are available under Section 2164. Below is a brief summary of the applicable statutory requirements. Additional guidance on this issue is forthcoming.

Section 2164 authorizes a total of 100 million dollars (less a reduction of 0.25 percent that the Secretary may use to provide outreach and share best practices of STC programs) for these grants. A state's share will be determined using the same ratio as would apply under a Reed Act distribution that would have been made October 1, 2010, under Section 903(a)(2)(B), SSA. This means each state's share is based on its proportionate share of FUTA taxable wages multiplied by the \$100,000,000 (less 0.25 percent). One-third of a state's share is available for grants for implementation or improved administration of an STC program. The remaining two-thirds of a state's share is available for grants for the promotion and enrollment of employers in a conforming STC program. The Department will issue additional guidance about these grants, including the eligibility criteria for the two-thirds' share grants. The deadline to apply for this grant is December 31, 2014.

Only states that have STC laws conforming to Section 3306(v), FUTA, may be approved for these grants. Any state whose law is not certified under Section 3304, FUTA, or under Section 303, SSA, is not eligible to receive a grant. In addition, to qualify for a grant, a state's STC program may not be subject to discontinuation. If a state has a new STC enactment, it must be effective within 12 months of the date of the Secretary's certification to the Treasury.

States will be notified within 30 days of receipt of a complete application whether they have been approved for a grant. If approved, the Secretary of Treasury will transfer the grant amount to the state's account in the UTF within seven days of receipt of the Department's certification.

The Secretary will recoup any grant awarded to a state if during the five-year period after the award, the state terminates its STC program or otherwise fails to meet the Federal STC requirements.

10. **Model Legislation.** Section 2165 requires the Secretary to develop model legislative language and guidance for use by the states in developing and enacting STC programs. Based on the feedback received during the consultation described in section 3. above, the Department is drafting the model legislative language, which will be provided in subsequent guidance.
11. **STC Study.** Section 2166 requires the Secretary to report to Congress and the President on the implementation of these provisions by February 22, 2016. The report must include a description of best practices by states and employers in the administration, promotion and use of STC; an analysis of significant challenges to the enactment and implementation of STC programs; and a survey of employers in all states to determine the level of interest in STC programs. The Department expects to work with states to carry out these activities.

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

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

14. Attachments.

Attachment I: Text of Subtitle D – Short-Time Compensation Program

Attachment II: Text of Agreement

Attachment III: Addendum to FY2012 Annual Funding Agreement for Unemployment Insurance (UI) Program

Attachment IV: Grants For STC Programs – Amounts

**Subtitle D—Short-Time Compensation
Program**

SEC. 2160. SHORT TITLE.

This subtitle may be cited as the “Layoff Prevention Act of 2012”.

SEC. 2161. TREATMENT OF SHORT-TIME COMPENSATION PROGRAMS.

(a) DEFINITION.—

(1) IN GENERAL.—Section 3306 of the Internal Revenue Code of 1986 (26 U.S.C. 3306) is amended by adding at the end the following new subsection:

“(v) SHORT-TIME COMPENSATION PROGRAM.—For purposes of this part, the term ‘short-time compensation program’ means a program under which—

“(1) the participation of an employer is voluntary;

“(2) an employer reduces the number of hours worked by employees in lieu of layoffs;

“(3) such employees whose workweeks have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the State to be appropriate (but in no case more than 60 percent), are not disqualified from unemployment compensation;

“(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would otherwise be payable to the employee if such employee were unemployed;

“(5) such employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency;

“(6) eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Investment Act of 1998) to enhance job skills if such program has been approved by

the State agency;

“(7) the State agency shall require employers to certify that if the employer provides health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) or contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program;

“(8) the State agency shall require an employer to submit a written plan describing the manner in which the requirements of this subsection will be implemented (including a plan for giving advance notice, where feasible, to an employee whose workweek is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation and such other information as the Secretary of Labor determines is appropriate;

“(9) the terms of the employer’s written plan and implementation shall be consistent with employer obligations under applicable Federal and State laws; and

“(10) upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program.”.

(2) EFFECTIVE DATE.—Subject to paragraph (3), the amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(3) TRANSITION PERIOD FOR EXISTING PROGRAMS.—In the case of a State that is administering a short-time compensation program as of the date of the enactment of this Act and the State law cannot be administered consistent with the amendment made by paragraph (1), such amendment shall take effect on the earlier of—

(A) the date the State changes its State law in order to be consistent with such amendment; or

(B) the date that is 2 years and 6 months after the

date of the enactment of this Act.

(b) CONFORMING AMENDMENTS.—

(1) INTERNAL REVENUE CODE OF 1986.—

(A) Subparagraph (E) of section 3304(a)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

“(E) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined under section 3306(v));”.

(B) Subsection (f) of section 3306 of the Internal Revenue Code of 1986 is amended—

(i) by striking paragraph (5) (relating to short time compensation) and inserting the following new paragraph:

“(5) amounts may be withdrawn for the payment of short time compensation under a short-time compensation program (as defined in subsection (v)); and”;

(ii) by redesignating paragraph (5) (relating to self employment assistance program) as paragraph (6).

(2) SOCIAL SECURITY ACT.—Section 303(a)(5) of the Social Security Act is amended by striking “the payment of short time compensation under a plan approved by the Secretary of Labor” and inserting “the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986)”.

(3) UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1992.—

Subsections (b) through (d) of section 401 of the Unemployment Compensation Amendments of 1992 (26 U.S.C. 3304 note) are repealed.

SEC. 2162. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION PAYMENTS IN STATES WITH PROGRAMS IN LAW.

(a) PAYMENTS TO STATES.—

(1) IN GENERAL.—Subject to paragraph (3), there shall be paid to a State an amount equal to 100 percent of the amount of short-time compensation paid under a short-time compensation program (as defined in section 3306(v) of the Internal

Revenue Code of 1986, as added by section 2161(a)) under the provisions of the State law.

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

(3) LIMITATIONS ON PAYMENTS.—

(A) GENERAL PAYMENT LIMITATIONS.—No payments shall be made to a State under this section for short time compensation paid to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.

(B) EMPLOYER LIMITATIONS.—No payments shall be made to a State under this section for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

(b) APPLICABILITY.—

(1) IN GENERAL.—Payments to a State under subsection

(a) shall be available for weeks of unemployment—

(A) beginning on or after the date of the enactment of this Act; and

(B) ending on or before the date that is 3 years and 6 months after the date of the enactment of this Act.

(2) THREE-YEAR FUNDING LIMITATION FOR COMBINED PAYMENTS UNDER THIS SECTION AND SECTION 2163.—States may receive payments under this section and section 2163 with respect to a total of not more than 156 weeks.

(c) TWO-YEAR TRANSITION PERIOD FOR EXISTING PROGRAMS.—

During any period that the transition provision under section 2161(a)(3) is applicable to a State with respect to a short-time compensation program, such State shall be eligible for payments under this section. Subject to paragraphs (1)(B) and (2) of subsection (b), if at any point after the date of the enactment of this Act the State enacts a State law providing for the payment of short time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State shall be eligible for payments under this section after the effective date of such enactment.

(d) FUNDING AND CERTIFICATIONS.—

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

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

(e) DEFINITIONS.—In this section:

(1) SECRETARY.—The term “Secretary” means the Secretary of Labor.

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

SEC. 2163. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION AGREEMENTS.

(a) FEDERAL-STATE AGREEMENTS.—

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

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

(b) PROVISIONS OF FEDERAL-STATE AGREEMENT.—

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

(2) LIMITATIONS ON PLANS.—

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

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

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

(c) PAYMENTS TO STATES.—

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

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

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

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

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

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

(d) APPLICABILITY.—

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

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

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

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

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

(1) shall not be eligible for payments under this section

for weeks of unemployment beginning after the effective date of such State law; and

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

(f) DEFINITIONS.—In this section:

(1) SECRETARY.—The term “Secretary” means the Secretary of Labor.

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

SEC. 2164. GRANTS FOR SHORT-TIME COMPENSATION PROGRAMS.

(a) GRANTS.—

(1) FOR IMPLEMENTATION OR IMPROVED ADMINISTRATION.—The Secretary shall award grants to States that enact short time compensation programs (as defined in subsection (i)(2)) for the purpose of implementation or improved administration of such programs.

(2) FOR PROMOTION AND ENROLLMENT.—The Secretary shall award grants to States that are eligible and submit plans for a grant under paragraph (1) for such States to promote and enroll employers in short-time compensation programs (as so defined).

(3) ELIGIBILITY.—

(A) IN GENERAL.—The Secretary shall determine eligibility criteria for the grants under paragraphs (1) and (2).

(B) CLARIFICATION.—A State administering a short time compensation program, including a program being administered by a State that is participating in the transition under the provisions of sections 301(a)(3) and 302(c), that does not meet the definition of a short-time compensation program under section 3306(v) of the Internal Revenue Code of 1986 (as added by 211(a)), and a State with an

agreement under section 2163, shall not be eligible to receive a grant under this section until such time as the State law of the State provides for payments under a short-time compensation program that meets such definition and such law.

(b) AMOUNT OF GRANTS.—

(1) IN GENERAL.—The maximum amount available for making grants to a State under paragraphs (1) and (2) shall be equal to the amount obtained by multiplying \$100,000,000 (less the amount used by the Secretary under subsection (e)) by the same ratio as would apply under subsection (a)(2)(B) of section 903 of the Social Security Act (42 U.S.C. 1103) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1) of such section) that would have been subject to transfer to State accounts, as of October 1, 2010, under the provisions of subsection (a) of such section.

(2) AMOUNT AVAILABLE FOR DIFFERENT GRANTS.—Of the maximum incentive payment determined under paragraph (1) with respect to a State—

(A) one-third shall be available for a grant under subsection (a)(1); and

(B) two-thirds shall be available for a grant under subsection (a)(2).

(c) GRANT APPLICATION AND DISBURSAL.—

(1) APPLICATION.—Any State seeking a grant under paragraph (1) or (2) of subsection (a) shall submit an application to the Secretary at such time, in such manner, and complete with such information as the Secretary may require. In no case may the Secretary award a grant under this section with respect to an application that is submitted after December 31, 2014.

(2) NOTICE.—The Secretary shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary's findings with respect to the requirements for a grant under paragraph (1) or (2) (or both) of subsection (a).

(3) CERTIFICATION.—If the Secretary finds that the State

law provisions meet the requirements for a grant under subsection (a), the Secretary shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the grant payment to be transferred to the State account in the Unemployment Trust Fund (as established in section 904(a) of the Social Security Act (42 U.S.C. 1104(a))) pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer to the State account within 7 days after receiving such certification.

(4) REQUIREMENT.—No certification of compliance with the requirements for a grant under paragraph (1) or (2) of subsection (a) may be made with respect to any State whose—

(A) State law is not otherwise eligible for certification under section 303 of the Social Security Act (42 U.S.C. 503) or approvable under section 3304 of the Internal Revenue Code of 1986; or

(B) short-time compensation program is subject to discontinuation or is not scheduled to take effect within 12 months of the certification.

(d) USE OF FUNDS.—The amount of any grant awarded under this section shall be used for the implementation of short-time compensation programs and the overall administration of such programs and the promotion and enrollment efforts associated with such programs, such as through—

(1) the creation or support of rapid response teams to advise employers about alternatives to layoffs;

(2) the provision of education or assistance to employers to enable them to assess the feasibility of participating in short-time compensation programs; and

(3) the development or enhancement of systems to automate—

(A) the submission and approval of plans; and

(B) the filing and approval of new and ongoing short time compensation claims.

(e) ADMINISTRATION.—The Secretary is authorized to use 0.25 percent of the funds available under subsection (g) to provide for outreach and to share best practices with respect to this section and short-time compensation programs.

(f) RECOUPMENT.—The Secretary shall establish a process under which the Secretary shall recoup the amount of any grant awarded under paragraph (1) or (2) of subsection (a) if the Secretary determines that, during the 5-year period beginning on the first date that any such grant is awarded to the State, the State—

(1) terminated the State's short-time compensation program;

Or

(2) failed to meet appropriate requirements with respect to such program (as established by the Secretary).

(g) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, to the Secretary, \$100,000,000 to carry out this section, to remain available without fiscal year limitation.

(h) REPORTING.—The Secretary may establish reporting requirements for States receiving a grant under this section in order to provide oversight of grant funds.

(i) DEFINITIONS.—In this section:

(1) SECRETARY.—The term “Secretary” means the Secretary of Labor.

(2) SHORT-TIME COMPENSATION PROGRAM.—The term “short time compensation program” has the meaning given such term in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

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

SEC. 2165. ASSISTANCE AND GUIDANCE IN IMPLEMENTING PROGRAMS.

(a) IN GENERAL.—In order to assist States in establishing, qualifying, and implementing short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)), the Secretary of Labor (in this section referred to as the “Secretary”) shall—

(1) develop model legislative language which may be used by States in developing and enacting such programs and

periodically review and revise such model legislative language;

(2) provide technical assistance and guidance in developing, enacting, and implementing such programs;

(3) establish reporting requirements for States, including reporting on—

(A) the number of estimated averted layoffs;

(B) the number of participating employers and workers;
And

(C) such other items as the Secretary of Labor determines are appropriate.

(b) MODEL LANGUAGE AND GUIDANCE.—The model language and guidance developed under subsection (a) shall allow sufficient flexibility by States and participating employers while ensuring accountability and program integrity.

(c) CONSULTATION.—In developing the model legislative language and guidance under subsection (a), and in order to meet the requirements of subsection (b), the Secretary shall consult with employers, labor organizations, State workforce agencies, and other program experts.

SEC. 2166. REPORTS.

(a) REPORT.—

(1) IN GENERAL.—Not later than 4 years after the date of the enactment of this Act, the Secretary of Labor shall submit to Congress and to the President a report or reports on the implementation of the provisions of this subtitle.

(2) REQUIREMENTS.—Any report under paragraph (1) shall at a minimum include the following:

(A) A description of best practices by States and employers in the administration, promotion, and use of short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)).

(B) An analysis of the significant challenges to State enactment and implementation of short-time compensation

programs.

(C) A survey of employers in all States to determine the level of interest in participating in short-time compensation programs.

(b) FUNDING.—There are appropriated, out of any moneys in the Treasury not otherwise appropriated, to the Secretary of Labor, \$1,500,000 to carry out this section, to remain available without fiscal year limitation.

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Layoff Prevention Act of 2012

**100 Percent Reimbursement of Short Time Compensation
Benefit Costs Paid Under State Law**

AGREEMENT BETWEEN

THE STATE OF _____

AND

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

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

- I. The _____ State Workforce Agency, hereinafter referred to as the "Agency," will make payments of Short-Time Compensation (STC) benefits in accordance with the Act (which is incorporated herein by reference), and will cooperate with the U.S. Department of Labor (Department), and with other state agencies in making such payments.
- II. The Agency and other appropriate state officials will perform all of the functions and duties undertaken under this Agreement in accordance with the terms of this Agreement and the regulations, operating instructions, or guidance issued by the Department of Labor.
- III. If the Agency's State law was being administered on February 22, 2012 and it cannot be administered consistent with the definition of an STC program in Section 3306(v), FUTA, unless the State amends its law in order to conform to those

requirements effective no later than August 23, 2014, the State may not continue to make State STC payments nor receive reimbursement of State STC benefit costs with respect to weeks of unemployment beginning after August 23, 2014.

IV. The Agency will maintain such records pertaining to the administration of the Act as the Department requires, and will make all such records available for inspection, examination, and audit at such time and by such federal officials or employees as the Department may designate or as may be required by law.

V. The Agency will furnish to the Department or its agents such information and reports, and will fully participate in any studies or evaluations the Department determines are necessary or appropriate for carrying out the purposes of the Act.

VI. The Department will make available in the Payment Management System an amount equal to 100 percent of the estimated amount needed by the State for payment of STC eligible for Federal reimbursement during that month, adjusted for any excess or shortfall in amounts provided in any prior month. The first payment to the State will be made available after the State signs this agreement and the addendum to the FY 2012 Annual Funding Agreement for the Unemployment Compensation (UC) Program, in an amount equal to the estimated State STC payments from the date of enactment through the month following the month in which STC guidance is issued, based on State STC payments as reported on the ETA 5159. At the beginning of each month thereafter, the estimated amounts needed for payment of eligible State STC to be made available will generally be equal to eligible State STC amounts paid in the most recent month for which data are reported, adjusted for any excess or shortfall in amounts provided in prior months. The Department intends to use the State STC reported on the ETA 2112 as the basis for estimates and adjustments except that the initial allocation will be based on the ETA 5159 report as described above.

In making STC payments, the Agency agrees that:

- a. No payments shall be made to the Agency for STC paid to any individual in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to the individual for a week of total unemployment.
- b. No payments shall be made to the Agency for benefits paid to any individual by the Agency under an STC program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.
- c. No payment shall be made to the Agency with respect to more than 156 weeks of STC benefits.

d. No payments shall be made to the Agency under an STC program for weeks of unemployment ending on or after August 23, 2015.

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

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

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

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

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

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

Secretary of Labor
U.S. Department of Labor

Date

By DRAFT ONLY – Not for Signature
(State Signatory)

(Title)

DATED: _____

For the State of _____

CERTIFICATION OF AUTHORITY

NAME DRAFT ONLY – Not for Signature

TITLE _____

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

Signature: DRAFT ONLY – Not for Signature

Title: _____

Date: _____

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

Grant/Agreement No. UI-XXXXX

(To be completed by DOL)

**CFDA # 17.225 Unemployment Insurance
CFDA#17.207 Employment Service**

1. **Relationship to Other Agreements:** Unless inconsistent with specific terms and conditions provided herein, the terms and conditions of the Fiscal Year (FY) 2012 UI Program annual funding agreement between the U.S. Department of Labor, Employment and Training Administration (Grantor) and the **STATE/COMMONWEALTH** of (Grantee) apply to the funds identified in Section 2 and are hereby incorporated by reference.
2. **Grant Funds:** This annual funding grant agreement addendum addresses additional requirements applicable to funds appropriated in the Middle Class Tax Relief and Jobs Creation Act of 2012 (the Act) for Reimbursement of Short-Time Compensation (STC) benefit payments.
3. **Purposes and Principles:** A major goal of the Act is to have State Workforce Systems pursue strategies that would positively impact employment levels by satisfying certain needs of unemployed workers and employers. To that end the Act makes funds available to states engaging in programs that have been shown capable of supporting the goal. Funds are also made available to evaluate the various strategies to help determine their effectiveness and to understand their impact on workers, employers, and the labor market. Consistent with transparency and accountability principles, reporting and monitoring of activities and associated funding are essential, and grantees are expected to support these activities through compliance with all related requirements.
4. **Limit on Funds:** Funds appropriated or otherwise made available to states by the Act are to be strictly used for the intended purposes as stated in agreements and guidance or operating instructions issued by the Department.
5. **Reporting: Program Management and Financial Expenditure:** For the purposes of funding, accountability, monitoring, administering, and evaluating the various programs and activities required or permitted by the Act, the Grantee agrees to furnish timely to the Department such information, as approved by OMB under the Paperwork Reduction Act, as the Department, or representative, requests. The manner in which states will satisfy such requests will be conveyed in guidance issued by the Department.

6. **Applicable Authority:** Funds provided under the Act and provided under this grant agreement addendum must be expended in accordance with all applicable Federal statutes, regulations, policies, and guidance.
7. **Grant Expenditure Period:** The period of availability of funding varies for the different components and will be provided in the Notice of Obligation as funding is provided.
8. **Notice of Obligation:** Funds will be obligated and allocated via a Notice of Obligation (NOO) grant modification to the FY 2012 annual funding agreement/grant. Obligations and costs may not exceed the amount obligated by the NOO modification unless otherwise modified by the Grantor. Upon execution of this addendum, the NOO modification to the FY 2012 grant will be issued. Funds are obligated for the amount indicated in the NOO grant modification document in accordance with the Grantee's UI allotment levels. The Federal obligation level will be amended by the Grant Officer to increase (or adjust) amounts available to the Grantee as funds become available for obligation and additional NOO (or Deobligation) grant modifications are required and issued.
9. **Signatory Information:** By signing below, the signatories agree to the terms and conditions of this agreement addendum on behalf of their respective agencies indicated below. In addition, the Grantee's expenditure of any funds properly granted hereunder constitutes acceptance of the award, including any new or additional terms and conditions as may be attached hereto.

GRANTEE:
(State/Commonwealth)

| | |
|-----------------|------------------------|
| Agency Name | TAX EIN# |
| Mailing Address | PMS EIN# (If known) |
| | PMS PIN ACCT# |
| | DUNS# |

| | | |
|--|-----------|-------|
| BY | | |
| Governor/Authorized Signatory <small>(Print name)</small> | Signature | Date |
| Title | | Email |
| Address | | |

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

THOMAS C.MARTIN
Grant Officer

Signature

Date

Attachment IV

GRANTS FOR STC PROGRAMS - AMOUNTS

| State | Total Share | 1/3 Share | 2/3 Share |
|-------|--------------|--------------|--------------|
| AK | \$240,772 | \$80,257 | \$160,515 |
| AL | \$1,414,715 | \$471,572 | \$943,143 |
| AR | \$879,937 | \$293,312 | \$586,625 |
| AZ | \$1,955,074 | \$651,691 | \$1,303,383 |
| CA | \$11,593,587 | \$3,864,529 | \$7,729,058 |
| CO | \$1,819,895 | \$606,632 | \$1,213,263 |
| CT | \$1,260,659 | \$420,220 | \$840,439 |
| DC | \$416,291 | \$138,764 | \$277,527 |
| DE | \$312,075 | \$104,025 | \$208,050 |
| FL | \$5,913,909 | \$1,971,303 | \$3,942,606 |
| GA | \$3,072,385 | \$1,024,128 | \$2,048,257 |
| HI | \$440,074 | \$146,691 | \$293,383 |
| IA | \$1,061,207 | \$353,736 | \$707,471 |
| ID | \$456,199 | \$152,066 | \$304,133 |
| IL | \$4,307,659 | \$1,435,886 | \$2,871,773 |
| IN | \$2,074,861 | \$691,620 | \$1,383,241 |
| KS | \$1,031,988 | \$343,996 | \$687,992 |
| KY | \$1,330,647 | \$443,549 | \$887,098 |
| LA | \$1,501,852 | \$500,617 | \$1,001,235 |
| MA | \$2,366,515 | \$788,838 | \$1,577,677 |
| MD | \$1,832,552 | \$610,851 | \$1,221,701 |
| ME | \$413,881 | \$137,960 | \$275,921 |
| MI | \$2,840,535 | \$946,845 | \$1,893,690 |
| MN | \$1,879,950 | \$626,650 | \$1,253,300 |
| MO | \$1,930,233 | \$643,411 | \$1,286,822 |
| MS | \$802,670 | \$267,557 | \$535,113 |
| MT | \$283,550 | \$94,517 | \$189,033 |
| NC | \$2,899,754 | \$966,585 | \$1,933,169 |
| ND | \$237,096 | \$79,032 | \$158,064 |
| NE | \$649,799 | \$216,600 | \$433,199 |
| NH | \$451,654 | \$150,551 | \$301,103 |
| NJ | \$2,937,860 | \$979,287 | \$1,958,573 |
| NM | \$572,119 | \$190,706 | \$381,413 |
| NV | \$1,027,665 | \$342,555 | \$685,110 |
| NY | \$6,078,428 | \$2,026,143 | \$4,052,285 |
| OH | \$3,714,908 | \$1,238,303 | \$2,476,605 |
| OK | \$1,129,637 | \$376,546 | \$753,091 |
| OR | \$1,189,281 | \$396,427 | \$792,854 |
| PA | \$4,010,338 | \$1,336,779 | \$2,673,559 |
| PR | \$601,269 | \$200,423 | \$400,846 |
| RI | \$329,158 | \$109,719 | \$219,439 |
| SC | \$1,352,143 | \$450,714 | \$901,429 |
| SD | \$268,073 | \$89,358 | \$178,715 |
| TN | \$1,967,539 | \$655,846 | \$1,311,693 |
| TX | \$8,297,415 | \$2,765,805 | \$5,531,610 |
| UT | \$870,818 | \$290,273 | \$580,545 |
| VA | \$2,739,420 | \$913,140 | \$1,826,280 |
| VI | \$28,519 | \$9,506 | \$19,013 |
| VT | \$202,352 | \$67,451 | \$134,901 |
| WA | \$2,143,527 | \$714,509 | \$1,429,018 |
| WI | \$1,923,648 | \$641,216 | \$1,282,432 |
| WV | \$488,063 | \$162,688 | \$325,375 |
| WY | \$205,845 | \$68,615 | \$137,230 |
| US | \$99,750,000 | \$33,250,000 | \$66,500,000 |