workers at Hanover Shoe Company located in Marlington, West Virginia. The notice was published in the Federal Register on March 10, 1995 (60 FR 13177).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at the subject firm's production facility in Hanover, Pennsylvania. The workers produce men's shoes.

The intent of the Department's certification is to include all workers of Hanover Shoe adversely affected by imports.

The amended notice applicable to TA–W–30,715 is hereby issued as follows:

''All workers of Hanover Shoe Company, Marlington, West Virginia (TA–W–30,715) and Hanover Shoe Company, Hanover, Pennsylvania (TA–W–30,715A) engaged in employment related to the production of men's shoes who became totally or partially separated from employment on or after January 25, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 20th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27093 Filed 10–31–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,823; TA–W–30,823A]

The Leslie Fay Companies, Inc. New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

The Leslie Fay Company, Incorporated dress division which includes Andy Fashions; Downing Garment; Glen Lyon Garment; Kingston Fashions; Pittston Fashions; Throop Fashions; and Ricky Fashions—at Route 315, Wilkes-Barre, Pennsylvania

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 14, 1995, applicable to all workers at the Leslie Fay Company, Incorporated operating various dress manufacturing facilities in Wilkes-Barre, Pennsylvania. The notice was published in the Federal Register on May 9, 1995 (60 FR 24653).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that workers of the Leslie Fay Companies, Inc., located in New York, New York, were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers of Leslie Fay adversely affected by imports.

The amended notice applicable to TA–W–30,823 is hereby issued as follows:

''All workers and former workers of The Leslie Fay Dress Division in Wilkes-Barre, Pennsylvania which includes: Andy Fashions; Downing Garment; Glen Lyon Garment; Kingston Fashions; Pittston Fashions; Throop Fashions; and Ricky Fashions (TA–W–30,823); and The Leslie Fay Companies, Inc., New York, New York (TA–W–30,823A) who were engaged in employment related to the production of ladies' dresses and became totally or partially separated from employment on or after March 1, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 20th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27095 Filed 10–31–95; 8:45 am]

BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPLs described below are published in the Federal Register in order to inform the public.

UIPL 29–83 Change 2

Secondary adjustments are a part of many State experience rating plans. This UIPL provides States with additional guidance concerning those secondary adjustments which may be used in determining reduced rates for employers.

UIPL 22–87, Change 1

UIPL 22–87, issued in 1987, consolidated several issuances concerning the treatment of pensions received by claimants for UC. This Change 1 to UIPL 22–87 provides further guidance on the subject. Specifically, it deals with the requirements concerning pensions when amounts are rolled over into eligible retirement plans. It was issued in response to numerous questions on the subject which were raised by States trying to determine how to deal with rollovers.

UIPL 17–95, Change 1

Public Law 103–465, commonly known as the legislation on ''GATT''—The General Agreement on Tariffs and Trade, included a provision that, effective with weeks beginning after January 1, 1997, requires States to deduct and withhold Federal income tax from UC if the individual so elects. UIPL 17–95 explained the change in UC law, discussed its effective date and provided model language for States to use in amending State UC law. Change 1 to UIPL 17–95 advised States of the Department of Labor's position concerning priorities when a claimant subject to withholding required under State law also requests the withholding of income tax.

UIPL 35–95

As a result of the increased use of telephone or other electronic methods of UC tax collection and benefit claimstaking, the Department has found it necessary to issue this UIPL in order to ensure that States are aware of the Department's position concerning the use of the new technology as it relates to the UC program. This UIPL sets forth the Department's position on the various issues involved and interprets the relevant law and regulation.

UIPL No. 1–96

The Department issues several types of directives in order to set forth official agency policy concerning the programs administered by the Department. Questions have been raised by several groups regarding what weight these directives carry as interpretations of Federal law. As a result, this directive was issued to clarify the status of these directives.

UIPL 2–96

It came to the Department's attention that several States restrict the approval of training to that which is provided within the State. Since 1974, it has been the express position of the Department that such restrictions are contrary to the requirements of the Federal Unemployment Tax Act. This directive was issued to restate and reinforce that position.

Dated: October 26, 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor.

Department of Labor

Employment and Training Administration, Washington, D.C. 20210

Classification: UI

Correspondence Symbol: TEURL

Dated: September 28, 1995

Directive: Unemployment Insurance Program Letter of No. 29–83 Change 2

To: All State Employment Security Agencies

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service

Subject: Experience Rating—Permissible Secondary Adjustments

1. *Purpose.* To provide States with additional guidance concerning those secondary adjustments which may be used in determining reduced rates for employers.

2. *References.* The Federal Unemployment Tax Act (FUTA); the Social Security Act (SSA); Unemployment Insurance Program Letter (UIPL) No. 29–83, dated June 23, 1983 and UIPL No. 29–83, Change 1, dated September 24, 1991 (both published at 56 *Fed. Reg.* 54891 (October 23, 1991)); and Employment Security Memorandum (ESM) No. 9, dated July 1940.

3. *Background.* Secondary adjustments are a part of many State experience rating plans. They are adjustments, permissible under limited conditions, to the measure of an employer's experience which bear no relation to the employer's experience. The most typical example of a secondary adjustment is the triggering of a particular rate schedule due to the unemployment fund's balance. Recently a question has been raised as to whether payments by employers to funds other than the State's unemployment fund may be used as secondary adjustments. This UIPL provides the Department's position.

Rescissions: None

Expiration Date: September 30, 1996

4. *Discussion.*

a. *Federal law.* As a condition of employers in a State receiving the additional credit, the State's law must be certified as meeting the requirements of Section 3303, FUTA, which provides, in pertinent part, as follows—

(a) STATE STANDARDS.—A taxpayer shall be allowed an additional credit under Section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date * * *.

The term ''pooled fund'' is defined in Section 3303(c)(2), FUTA, as ''an unemployment fund or any part thereof * * * into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.'' Similarly, Section 3303(c)(3), FUTA, defines ''partially pooled account'' as a ''part of an unemployment fund * * *.'' Section 3306(f), FUTA, defines ''unemployment fund'' as ''a special fund * * * for the payment of compensation * * *.'' These provisions establish an explicit linkage between experience rating and payments to the unemployment fund from which unemployment compensation (UC) is paid.

b. *Secondary Adjustments.* As noted in ESM No. 9 UIPL No. 29–83, the Department and its predecessor agencies have approved experience rating plans using secondary adjustments which are not related to an employer's experience. The following explanation of secondary adjustments (derived in part from ESM No. 9) is from page 10 of the attachment to UIPL 29–83:

The requirement that a reduced rate must be based on the employer's experience makes it necessary to maintain the influence of that experience in the determination of the reduced rate granted to an employer. The measurement of experience may be subjected to adjustments by the application of other factors bearing no relation to an employer's experience only if the basic experience factor has not been so impaired by combination with such other factors that the employer's own experience is no longer the basic determinant of his reduced rate.

* * * * *

A secondary adjustment that results in a *reduction* of rates has been found not to be an unreasonable distortion of the experience factor if the reduction is the same for all rated employers and if the reduction is not applied to employers not otherwise entitled to a reduced rate based on their own experience. [Emphasis in original.]

Although UIPL 29–83 is broadly written, it should not be read to permit the introduction of any factor unrelated to an employer's experience. It is the position of the Department that, to meet the requirements of Section 3303(a)(1), FUTA, secondary adjustments must directly serve the purpose of the unemployment fund.

A secondary adjustment, by definition, involves the intrusion of a factor unrelated to experience into the State's experience rating system. It does not follow that any intrusion is permissible. In fact, these intrusions have in the past been limited as described in UIPL 29–83. As discussed in item 4.a. above, experience rating is explicitly linked to payments to the unemployment fund. Therefore, the introduction of a factor which does not directly serve the purpose of the unemployment fund (i.e., the payment of UC) is an unacceptable intrusion into experience rating.

A payment to fund other than the unemployment fund is not a factor directly serving the unemployment fund's purpose and may not be used in determining the rate of an individual employer. This applies to payments to State general funds (for example, income or sales tax payments) as well as to payments which could potentially be used for payments of UC.[1] Similarly, the balance in another State fund may not be used to trigger rate schedules for the unemployment fund since the other fund does not directly serve the purpose of the unemployment fund.

A review of previously approved secondary adjustments indicates that the Department has limited approval only to adjustments directly serving the purpose of the unemployment fund.[2]

[1] The principal in certain State funds (often called reserve funds) may be used for any or all of the following purposes: the payment of UC, loans to the State's unemployment fund, or the payment of interest on advances made under Title XII, SSA. Reserve fund interest is used for non-UC purposes such as training or economic development activities. To date, all State reserve funds have been created with a concurrent reduction in the amount payable to the State's unemployment fund. Thus, the reserve funds have deprived the unemployment fund of assets and interest earnings. Moreover, there is no guarantee that the State will not amend its law to authorize use of reserve fund moneys for non-UC purposes. This is because, unlike unemployment funds, reserve funds are not subject to the ''immediate deposit'' with ''withdrawal'' standards of Sections 3304(a) (3) and (4), FUTA, and Sections 303(a) (4) and (5), SSA, which assure unemployment fund moneys will be used for the payment of UC. Finally, payment of interest on advances made under Title XII, SSA, from the unemployment fund is prohibited by Section 303(c)(3), SSA, and Section 3304(a)(17), FUTA. Thus, payments of interest do not serve the purposes of the unemployment fund.

[2] Voluntary contributions were originally considered to be acceptable secondary adjustments since they are paid into the unemployment fund, thereby directly servicing the fund's purpose. Since Section 3303(d), FUTA, now contains specific authorization for voluntary contributions, their status as secondary adjustments is moot. Section 3303(d) was added to FUTA in 1947 to ''give express statutory sanction to the administrative interpretation which has permitted voluntary contributions . . .'' and to ''provide for a definite period within which voluntary contributions must

Continued

For example, the triggering of rate schedules generates sufficient revenues for the payment of UC. Factors related to socialized costs, including the experience factor in benefit-wage ratio States, serve to make the fund whole for costs which are not otherwise funded through experience rates. These costs include UC not charge to a specific employer or charged to an employer who has gone out of business.

5. *Action Required.* State agency administrators are requested to review existing State law provisions to ensure that Federal law requirements as set forth in this UIPL are met. Prompt action, including corrective legislation, should be taken to assure Federal requirements are met.

7. *Inquiries.* Direct questions to the appropriate Regional Office.

Department of Labor

Employment and Training Administration, Washington, D.C. 20210

Classification: UI

Correspondence Symbol: TEURL

Dated: June 19, 1995

Directive: Unemployment Insurance Program Letter No. 22–87 Change 1

To: All State Employment Security Agencies

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service

Subject: Whether Unemployment Compensation must be Reduced when Amounts are Rolled Over into Eligible Retirement Plans

1. *Purpose.* To provide guidance concerning the Federal unemployment compensation (UC) law requirements relating to the deduction from UC of ''rollovers'' of retirement funds.

2. *References.* The Internal Revenue Code of 1986 (IRC), including section 3304(a)(15) of the Federal Unemployment Tax Act (FUTA) and section 402; and Unemployment Insurance Program Letter (UIPL) No. 22–87, 52 Fed. Reg. 22546 (1987). UIPL 22–87 was released April 30, 1987, but erroneously dated April 30, 1988.

3. *Background.* Section 3304(a)(15), FUTA, requires, as a condition for employers in a State to receive credit against the Federal unemployment tax, that the amount of UC payable to an individual be reduced for any week which begins in a period with respect to which the individual is ''receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual . . .'' This section of FUTA goes on to provide certain exceptions to this requirement not relevant to this Change 1.

Rescissions: None.

Expiration Date: June 30, 1996.

Section 402(c), IRC, provides for the transfer of ''eligible rollover distributions'' from a ''qualified trust'' to an ''eligible retirement plan.'' (Section 402(c)(8) of the IRC provides definitions of ''qualified trust'' and ''eligible retirement plan.'' Section 402(c)(4) defines ''eligible rollover distribution.'') If all the requirements of Section 402, IRC, are met, including that the transfer of the payment is made within 60 days of receipt by the individual, then the payments will not be included in gross income for Federal income tax purposes.

In light of the retirement pay provisions of Section 3304(a)(15), FUTA, the question has arisen whether States are required to reduce UC when distributions are rolled over. This Change 1 is issued to provide the Department of Labor's position on this question.

4. *Effect of Rollovers.* If a rollover from a qualified trust into an eligible retirement plan is not subject to Federal income tax, then it is not considered to be ''received'' by the individual for purposes of Section 3304(a)(15), FUTA. A non-taxable rollover does not represent a payment to the individual for purposes of retirement. Instead, it merely effectuates a change with respect to the retirement plan under which the amounts are maintained. Therefore, it is not considered to be ''received'' and States are not required to reduce UC due to such rollovers. However, if any distribution (or part of a distribution) from a qualified trust is subject to Federal income tax, then that amount is considered to be ''received'' for purposes of the FUTA and UC must be reduced if otherwise required by Section 3304(a)(15).

States should also be aware that, when any distribution is paid as a lump sum, FUTA does not require a reduction in UC. In this case, it is not necessary to determine if the payment is ''received'' by the individual. As discussed on page 6 of UIPL 22–87, FUTA does not require UC to be reduced due to the receipt of non-periodic, lump sum retirement payments. Further, FUTA only requires reduction of UC due to receipt of amounts based on the previous work of the individual. Therefore, for example, if a distribution is paid to a surviving spouse, the spouse's UC need not be reduced.

5. *Action Required.* State Administrators should provide this information to appropriate staff.

6. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

Department of Labor

Employment and Training Administration, Washington, D.C. 20210

Classification: UI

Correspondence Symbol: TEURL

Dated: September 28, 1995

Directive: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 17–95 CHANGE 1

To: ALL STATE EMPLOYMENT SECURITY AGENCIES

From: MARY ANN WYRSCH, Director, Unemployment Insurance Service

Subject: Priority of Withholding from Unemployment Compensation (UC)

1. *Purpose.* To advise States of the Department of Labor's position concerning priorities when a claimant subject to withholding required under State law also requests the withholding of income tax.

2. *References.* The Internal Revenue Code of 1986 (IRC), as amended, including the Federal Unemployment Tax Act; Title III of the Social Security Act (SSA); Section 702 of P.L. 103–465; 26 C.F.R. 31–3402(i)–2; and Unemployment Insurance Program Letter (UIPL) 17–95.

3. *Background.* UIPL 17–95, dated February 28, 1995, provided guidance concerning the withholding of income tax from UC. This Change 1 provides guidance on a matter left unresolved in that UIPL: the priority of withholding when other amounts are also to be withheld from the same payment of UC.

4. *Discussion.* Federal law requires withholding from UC in certain cases. Under Section 303(a)(1), SSA, States must have ''methods of administration'' for enforcing amounts owed to the unemployment fund. The principal ''method of administration'' for collecting these overpayments is the offsetting of amounts from future payments of UC. Also, States are required to withhold certain child support obligations under Section 303(e)(2), SSA.

Rescissions: None

Expiration Date: September 30, 1996

Additional provisions of the SSA gives States the option of withholding other amounts from UC. Section 303(d)(2), SSA, provides for the withholding of Food Stamp

be made . . .'' (H. Rep. No. 759, 80th Cong., 1st Sess. (1947)).

overissuances from UC. Section 303(g), SSA, authorizes interstate offset of overpayments as well as offsets of overpayments between State UC and Federal UC programs where the State acts as an agent for the Department of Labor.

Unlike the above forms of withholding, withholding of income tax is voluntary on the part of the claimant. Giving priority to the voluntary withholding of income tax would frustrate the ''involuntary'' withholding requirements.

Section 3402(p)(2), IRC, provides that, for withholding purposes, a payment of UC shall be treated as if it were a payment of *wages* by an employer to an employee. Implementing regulations at 20 C.F.R. 31.3402(i)–2 provide that an employee may request the employer to withhold an additional amount from the employee's wages. The employer must comply with the employee's request, but only to the extent that the requested amount does not exceed the amount remaining *after* the employer has withheld all amounts required to be withheld by Federal, State and local laws.

Based on the above, the Department has concluded that amounts required to be withheld under State law must be withheld prior to any voluntary withholding requested by the claimant. The Department continues to leave to the States the matter of priorities among amounts that are required to be withheld. Although States are encouraged to be more specific on this point, Section (4) of the attached revised draft language does not specify any priorities among the required withholdings. States may, of course, also make any changes to the draft language necessary to conform with State usage.

5. *Action Required.* State agencies should take action to assure that the above position is reflected in State law. States not using the draft language are reminded that they will need to submit a plan to the appropriate Regional Office no later than September 30, 1996.

6. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

7. *Attachment.* Revised Draft Language to Implement a Voluntary Withholding Program.

Attachment to UIPL 17–95, Change 1—Revised Draft Language To Implement a Voluntary Withholding Program

(1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(A) Unemployment compensation is subject to Federal, State and local income tax;

(B) Requirements exist pertaining to estimated tax payments;

(C) The individual may elect to have Federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code;

(D) The individual may elect to have State income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of ____ percent;

(E) The individual may elect to have local income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of ____ percent;

(F) The individual may elect to have State and local income taxes deducted and withheld from the individual's payment of unemployment compensation for other States and localities outside this State at the percentage established by such State or locality; and

(G) The individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the Federal, State or local taxing authority as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the United States Department of Labor and the Federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, food stamp overissuances or any other amounts required to be deducted and withheld under this Act.

Department of Labor

Employment and Training Administration, Washington, D.C. 20210

Classification: UI

Correspondence Symbol: TEUMI

Dated: June 28, 1995

Directive: Unemployment Insurance Program Letter No. 35–95

To: All State Employment Security Agencies

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service

Subject: The Department of Labor's Position on Issues and Concerns Associated With the Utilization of Telephone and Other Electronic Methods in the Unemployment Insurance (UI) Program

1. *Purpose.* To advise State Employment Security Agencies (SESAs) of the Department of Labor's position regarding issues relating to telephone or other electronic methods of processing in the UI program.

2. *Background.* Several SESAs are developing, exploring, or implementing a variety of innovative approaches to UI tax and benefit claimstaking and processing utilizing new and developing electronic information/communication technologies. The technologies include, but are not limited to, interactive voice response units (IVRs) for continued claims (inquiry and filing), telephone initial claimstaking, and electronic funds transfer for collecting UI taxes and paying benefits. These approaches continue the movement of the UI program toward a ''paperless'' system, thereby reducing office traffic and making it more easy and convenient for claimants and employers to transact UI business.

Insofar as SESAs have planned for or implemented new methods of claimstaking, issues have arisen requiring a response from the Department. Since there has not been an authoritative statement of the Department's position on this matter, the Department's position is set forth below.

Rescissions: None

Expiration Date: June 30, 1996

3. *Position.*

The Department's overall position is to promote methods of administration which ensure that UI applicants are afforded prompt and efficient service, and also ensures that pertinent Federal requirements are met by the claimant and SESA. To this end, the Department believes that SESAs should move toward fully implementing telephone claimstaking or other electronic methods of filing (e.g., computer terminals at kosks in one-stop centers etc.) for both initial and continued claims filing processes. The UI Information Technology Support Center (ITSC) will support the nationwide expansion of telephone claims technology.

Any system planned or implemented to provide ease and convenience for filing claims must, however, provide safeguards to meet the requirement of Section 303(a)(1) of the Social Security Act (SSA), that the State have in place such methods of administration reasonably calculated to insure the full payment of UI when due. In other words, there must be methods in place to protect against improper payments and fraud. Also, prior to filing an application (oral or IVR telephone system or other electronic method (touchscreen or computer keyboard)), claimants must be advised that the law provides penalties for false statements including penalties for perjury in regard to citizenship/immigration status. Since the State is required to establish a

record of the claim, the claimant should also be advised that his/her answers will cause a record to be produced.

A. *Initial Claimstaking.*

(1) Verification of Claimant Identity/Signature.

There is no Federal requirement that a claimant provide a signature on a claim form. Any such requirement would be pursuant to State law. However, Section 303(a)(1) of the SSA, requires that a State have such methods of administration to reasonably insure the full payment of unemployment compensation when due. In addition, Section 1137(a)(1), SSA, requires States to require the individual to furnish his/her Social Security Number as a condition of eligibility for benefits. These Federal provisions mean, among other things, that a State must have a system to reasonably insure that the name and Social Security Number used to establish eligibility for unemployment compensation belongs to the individual filing the claim.

(2) Identification of Ethnic Background and Handicapped Status.

The Department's regulations at 29 CFR Parts 31 and 32 require recipients of Department of Labor grant funds to collect, maintain and make available data as may be necessary to ascertain compliance with the requirements of the nondiscrimination statutes (Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as amended). Unemployment Insurance Program Letter UIPL) Nos. 46–89 and 46–89, Change 1, set forth the guidelines and requirements that State agencies must follow in collecting the data (at the time an individual files a new initial claim), and reporting the data relative to the unemployment insurance program.

There is no Federal requirement regarding the method to be utilized by the State to obtain the information (i.e., orally to a claimstaker, IVR, self-entry at a computer keyboard or touchscreen, completing a response on a hardcopy document or other method (e.g., recorded on tape)). However, the information must be given voluntarily by the individual and the State agency may not change the response of the applicant. The applicant also has the right to refuse to provide the information and such refusal will not subject such individual to any adverse action or treatment. Therefore, any telephone or other electronic claims filing system must be able to accommodate a ''no response'' answer.

(3) Child Support and Other Obligations.

Section 303(e)(2)(A)(i) of the SSA requires each State agency to ''require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support obligations (as defined in the last sentence of paragraph (1).'' UIPL Nos. 1–82 and 15–82 set forth the basic requirements for States to follow in implementing the statute. Essentially, the disclosure requires a ''yes'' or ''no'' response to a question on any child support owed when individuals file a new initial claim.

Effective January 1, 1997, among other Federal law amendments, Section 3304(a)(18) of the Federal Unemployment Tax Act (added by P.L. 103–465 enacted December 8, 1994) requires States to offer voluntary withholding of Federal income tax for all unemployment compensation (includes State UI, UCFE/UCX, TRA, DUA, etc.) payments made after January 1, 1997. UIPL No. 17–95 advised State agencies of the provisions and furnished guidelines on implementation. States will need to include questions during the new initial claim filing process on whether the individual elects or declines to have income tax withheld (mandatory for Federal, and optional for State or local tax withholding if authorized by State law).

Additionally, other Federal law provisions permit States, if the States have provisions in their State laws, to withhold amounts from unemployment compensation to pay health insurance premiums and food stamp over-issuances. Such provisions would also require asking claimants to provide responses to questions at the time of filing initial claims.

For any of the above obligations, other than obtaining the needed information at the time of filing an initial claim, there is no Federal requirement for the method to be utilized by the State to obtain the information. The State agency may obtain the information orally, by IVR, keyboard or touchscreen entry, on a hardcopy document or other method.

(4) Citizenship or National Status.

Section 1137(d)(1)(A) of the SSA requires that each State require, as a condition of eligibility for unemployment compensation, ''a declaration in writing by the individual, (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, that the individual is in a satisfactory immigration status.'' State laws require that individuals be able and available for work in order to be determined eligible for benefits. If an alien is not in ''satisfactory immigration status,'' such individual cannot be considered eligible for unemployment compensation. The Department issued guidance and instruction to States for implementation of Section 1137(d) and determining eligibility for aliens in UIPL Nos. 1–86; 12–87; 12–87, Change 1; and 6–89. The instructions provide that all applicants for unemployment compensation provide a ''yes'' or ''no'' response to a question on the new initial claim form or other form, asking if the applicant is a ''U.S. citizen or national.'' If the answer is ''no'', then an alien ID number is to be provided from registration documentation issued by the Immigration and Naturalization Service (INS) or such other documentation as the State determines constitutes reasonable evidence (Section 1137(d)(2). The above actions required of the applicant constitute ''in writing.''

In the case of telephone or other electronic method initial claims filing, it is the Department's position, that if the claimant takes action to produce a record indicating citizenship and immigration status, such as entry of data through a touchtone phone (IVR system) or through a computer keyboard or touchscreen response (at a kiosk) in response to a question, such action is a ''declaration in writing by the individual.'' However, a claimant's oral response to a claimstaker's question, and then the claimstaker's entry onto a form or into an electronic format, *does not* constitute such a declaration because the individual claimant is not making the electronic record him or herself, but such record is being made by a third party where an error could be made unbeknown to the claimant. In other words, the claimant must make the ''declaration in writing,'' not the claimstaker. If the SESA utilizes the latter procedure to take initial claims, the SESA must have an alternate means of obtaining an answer from the claimant that will satisfy the Federal requirement. Examples of such alternate means include recording the conversation on tape or obtaining the claimant's ''declaration in writing'' on a continued claim or other hard copy document.

In addition to the ''declaration in writing'' requirement of Section 1137(d)(1)(A), the provision also states that the declaration is made ''under penalty of perjury.'' However, it is the Department's position that State law must be followed regarding whether a claimant's statement (''declaration in writing'') is in a form that can uphold a perjury conviction. Therefore, the two tests for what constitutes a ''declaration in writing'' and for what is needed

under State law to uphold a ''penalty for perjury,'' must be met in order to comply with Section 1137(d)(1)(A) of the SSA. A SESA must consider both factors when designing and implementing a telephone or other electronic methods initial claims filing process.

(5) Not a Citizen or National—Presentation of Documentation.

Section 1137 (d)(2) of the SSA provides that if—

> An individual is not a citizen or national of the United States, there must be presented either—
>
> (A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number * * *, or
>
> (B) Such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

Therefore, neither Sections 1137(d)(2)(A) or (B) of the SSA may be satisfied by information obtained by telephone (orally or IVR) or entry via a computer keyboard or touchscreen.

In order to satisfy the Federal law requirements, if a SESA utilizes a method of claimstaking other than in-person filing, and the claimant indicates a noncitizenship status, the SESA (State) *must* require that the claimant submit ''alien registration documentation or other proof of immigration registration from the INS that contains the individual's alien admission number or alien file number.'' (Requirement of Section 1137 (d)(2)(A).) Since an alien cannot allow his/her original INS documentation to leave his/her person, it is the Department's position that a photostatic copy of the document(s) submitted by mail or facsimile (FAX) transmission would suffice to meet the requirements of the Section in lieu of viewing the original document(s), particularly when taken in conjunction with the provisions of Section 1137 (d)(2)(B). That Section provides that the individual can submit such other documents as the *State* determines constitutes reasonable evidence indicating a satisfactory immigration status. This will allow the SESA to proceed with verification with INS required by Section 1137 (d)(3). The provisions of Section 1137(d)(2)(B) are also utilized when an individual cannot produce documentation that provides an alien admission or file number. Copies of such documents must then be sent to the INS for verification of status in accordance with Section 1137 (d)(4)(B)(i).

The Department is in the process of resolving with the INS the differences between the Systematic Alien Verification for Entitlements (commonly called SAVE) program manual distributed by the INS requiring all entitlement agencies to have applicants present original documents (which must be kept on the person of the alien at all times) and the provision of Section 1137(d)(2)(B) that authorizes the State to accept such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status (which could be copies). The SAVE manual does not appear to giver any consideration to a method of filing other than in-person.

B. *Other Program Areas.*

(1) Unemployment Compensation for Ex-servicemembers (UCX) Claim—Use of Form ETA–841 (Formerly ES 970).

Form ETA–841 is an optional form and is not needed to establish UCX eligibility since all required information is on the DD Form 214 or information received from the Louisiana Claims Control Center (LCCC) based on a SESA's inquiry. Therefore, States implementing telephone or other electronic methods of initial claim filing do not have to complete and have the claimant sign Form ETA–841.

(2) UCX Claim—Eligibility in the Absence of DD Form 214.

Under a telephone or other electronic method of initial claim filing, if the claimant does not present copy no. 4 of his/her DD Form 214 or SESA filing procedures do not require submittal of a copy, eligibility for UCX may be established based on an inquiry to the LCCC to verify the validity of data that was transmitted to the SESA in response to the SESA's original notification to the LCCC that a claim was filed. However, such eligibility may be established only if the LCCC provides a copy of copy no. 5 of DD Form 214 to the SESA. While it is not mandatory, the Department believes it is a preferable procedure to have the claimant present, or submit by mail or FAX, a copy of copy no. 4 of DD Form 214 to the SESA.

(3) Trade Readjustment Allowances (TRA) Claim—Employer Signature on Form TRA–855A.

Neither Federal law nor regulations require an employer's signature on the form. Therefore, the required information employers provide may be obtained by telephone or computer interface.

(4) Extended Benefits (EB) and TRA—Tangible Evidence of Work Search.

The Department's regulations at 20 CFR Part 615 implement the provisions of the Federal-State Extended Unemployment Compensation Act (EB Act). 20 CFR 615.8(g)(1) requires that an individual claiming EB shall make a systematic and sustained effort (as defined in 20 CFR 615.2(0)(8)) to search for suitable work (as defined in 20 CFR 615.8(d)(4)) each week after notification of his/her job prospects, and will furnish the State agency with each claim, tangible evidence of such efforts. The Department's regulations at 20 CFR 617.17(a) implementing the provisions of the Trade Act of 1974, as amended, require that the EB work test be satisfied for each week of TRA claimed. 20 CFR 615.2(o)(9) defines ''tangible evidence'' as a written record that can be verified that includes the actions taken, methods of applying for work, types of work sought, dates and places where work was sought, and the name of the employer or person contacted and the outcome.

Most States' telephone or other electronic methods of claim filing systems will not suffice for the EB or TRA programs. Therefore, States utilizing a telephone or other electronic method of claims filing must have an alternative system in place to obtain the detailed information of a systematic and sustained search for work required as tangible evidence on weekly claims for EB and TRA to comply with the EB regulatory requirements. As examples, a State could set up a telephone tape system, which would enable claimants to describe their detailed work search over the phone, or, a State could require hard copy documents to be submitted for each week claimed that provide the required information.

4. *Action.* SESA Administrators should inform appropriate staff of the Department's position set forth in this program letter. The position set forth should be followed by SESAs in the design or implementation of any telephone or other electronic claims filing method.

5. *Contact.* Questions concerning this issuance should be directed to the appropriate Regional Office.

Department of Labor

Employment and Training Administration, Washington, D.C. 20210

Classification: UI

Correspondence Symbol: TEURL

Dated: October 5,1995

Directive: Unemployment Insurance Program Letter No. 1–96

To: All State Employment Security Agencies

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service

Subject: The Legal Authority of Unemployment Insurance Program Letters and Similar Directives

1. *Purpose.* To advise States of the position of the Department of Labor (Department) regarding the legal authority for Unemployment Insurance Program Letters (UIPLs) and other Departmental directives which affect the Federal-State Unemployment Insurance (UI) Program.

2. *References.* The Administrative Procedure Act (APA), 5 U.S.C. 551–559; the Social Security Act (SSA); and the Federal Unemployment Tax Act (FUTA).

3. *Background.* Departmental directives for the UI program include UIPLs, General Administration letters (GALs), Handbooks, the *Employment Security Manual* (*ESM*) and various transmittals of model legislation for implementing Federal law requirements. These directives are issued to the States under authority delegated by the Secretary of Labor.

The Department issues directives to set forth official agency policy. These directives state or clarify the Department's position, particularly with respect to the Department's interpretation of the minimum Federal requirements for conformity or compliance, thereby assuring greater uniformity of application of such requirements by the States. Oftentimes these directives provide information in the public interest which is vital to guiding the States' courses of operations.

States have raised questions regarding what weight these directives carry as interpretations of Federal law. These inquiries have come from State legislators, State Attorney General offices, other State officials and attorneys in Legal Services. It has sometimes been argued that, since the interpretations in these directives are not found in the Code of Federal Regulations, they have no legal effect. This UIPL is issued to advise States that these directives do, in fact, have legal effect.

Rescissions: None

Expiration Date: October 31, 1996

4. *Discussion.* The APA contains requirements to determine which rules are subject to its notice and comment procedures (ultimately leading to publication in the Code of Federal Regulations) to have force and effect as well as provisions for those rules which are not subject to those procedures. The APA, originally enacted on June 11, 1946, and later revised by P.L. 89–554 (5 U.S.C. 551–559) was passed in part to assist the various Federal Government agencies in their administration of statutes under their jurisdiction. The APA recognizes that some functions and some operations of Federal agencies do not lend themselves to a formal procedure. For this reason, the APA provides for different types of rules including ''substantive'' or ''legislative'' rules and ''interpretative'' rules. Section 553(b) of the APA, which requires that a general notice of proposed rule making must be published in the Federal Register, makes two exceptions to this requirement, one of which is relevant here as follows:

> Except when notice or hearing is required by statute, this subsection does not apply—
>
> (A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; * * *.

The test for determining if a rule is interpretative, and thus not subject to the requirement of a published notice of proposed rule making, is found in *Gibson Wine Co., Inc.* v. *Snyder et al.*, 194 F.2d 329 (D.C. Cir. 1952). In *Gibson*, the court addressed an interpretative ruling transmitted by the Deputy Commissioner of the Internal Revenue Service. The court stated on page 331:

> Administrative officials frequently announce their views as to the meaning of statutes or regulations. Generally speaking, it seems to be established that ''regulations,'' ''substantive rules'' or ''legislative rules'' are those which create law, usually implementary to an existing law; whereas *interpretative rules are statements as to what the administrative officer thinks the statute or regulation means.* [Emphasis supplied.]

Under *Gibson*, an interpretative rule is one which explains or defines particular terms in a statute or is an opinion of an official, having authority on a particular subject, as to the meaning of a statute or regulation. *Id.* at 331–332.

British Caledonian Airways, Ltd. v. *C.A.B.*, 584 F.2d 982 (D.C. Cir. 1978), is a leading case concerning the use of interpretative rules. The court stated that the agency was ''construing the language and intent of the existing statute and regulations in order to * * * remove uncertainty'' which is ''a function peculiarly within the ability and expertise of the agency.'' *Id.* at 991. The agency's actions were entirely appropriate ''to illuminate the meaning'' of its regulations. *Id.* at 993. Another court has stated that, when interpretative rules reiterate or explain an explicit statutory obligation, they can even help ''make sense'' of inconsistent statutory direction created by acts of Congress as long as they do not impose a new procedure or obligation which is not derived from the language of the statute or regulation. *American Hospital Association* v. *Bowen*, 640 F. Supp. 453, 460 (D.D.C. 1986).

In *Cabais* v. *Egger*, 690 F.2d 234 (D.C. Cir. 1982), the court held that a UIPL was not subject to the APA notice and comment procedures when it construed the language and intent of a statute and reminded States of existing duties, and where the UIPL did not grant or deny rights nor impose obligations which did not already exist in statute.[1]

Even if an interpretative rule has a wide ranging effect or a ''substantial impact'' on individuals, this does not mean it is subject to notice and comment procedures. Following the U.S. Supreme Court decision in *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council Inc.*, 435 U.S. 519, 524 (1978) that courts are generally not free to impose on agencies requirements that exceed those required by the APA, courts have rejected the ''substantial impact'' test. *See Cabais*, 690 F.2d at 237–238); *Rivera* v. *Becerra, 714 F.2d 887 (9th Cir. 1983). The Rivera* court, which specifically addressed UIPLs, stated that agencies are not required to comply with a notice and comment procedure for interpretative rules which have a substantial effect because Congress considered the matter and explicitly excepted interpretative rules and general statements of policy from this procedure. *Id.* at 890–891. The court observed that agencies now freely issue interpretative rules as guidance and that unnecessarily restrictive procedures should not be imposed beyond that contemplated by the APA. *Id.*

5. *Action Required.* State Administrators are requested to provide the above information to the appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

Department of Labor

Employment and Training Administration, Washington, DC 20210

Classification: UI

Correspondence Symbol: TEURL

Dated: October 5, 1995.

Directive: Unemployment Insurance Program Letter 2–96

To: All State Employment Security Agencies

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service

Subject: Approval of Training for Individuals who Reside in or File from Another State

[1] The *Cabais* court did, however, conclude that, in one area, a UIPL did create a substantive rule since, contrary to the broad latitude granted to the states in the statute, the UIPL imposed ''an obligation on the States not found in the statute itself.'' *Id.* at 239.

1. *Purpose.* To inform States of the Department of Labor's position relating to the approval of training for individuals who reside in or file an unemployment compensation (UC) claim from another State.

2. *References.* Sections 3304(a)(8) and 3304(a)(9)(A) of the Federal Unemployment Tax Act (FUTA); *Draft Legislation to Implement the Employment Security Amendments of 1970 * * * H.R. 14705 (1970 Draft Legislation),* Unemployment Insurance Program Letter (UIPL) 1276, dated July 22, 1974; and 20 C.F.R. Part 616.

3. *Background.* The Department has discovered that some States restrict the approval of training to that which is provided within the State. Since 1974, it has been the express position of the Department that such restrictions are contrary to the requirements of Sections 3304(a)(8) and (9)(A), FUTA. This UIPL is issued to restate this position.

4. *Applicable Provisions of Federal Law.* Section 3304(a)(8), FUTA, requires that a State law, as a condition of certification for credit against the Federal unemployment tax, provide that:

Rescissions: None

Expiration Date: October 31, 1996

Compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work).

The expressed intent of Congress in enacting this section was ''to act to remove the impediments to training which remains in our unemployment insurance system.'' (H.R. Rep. No. 612, 91st Congress, 1st Session 17).

Section 3304(a)(9)(A), FUTA, further requires a State law to provide that:

Compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation.

The expressed intent of Congress in enacting this section was to remove provisions of law ''which reduce the benefits, or otherwise penalize workers who reside elsewhere than in the State in which they worked and earned their right to benefits,'' because such provisions ''are not only inequitable to the individual claimant and injurious to the proper function of the unemployment system but inhibit among workers a very desirable mobility which is important to our economy.'' (H.R. Rep. No. 612, 91st Congress, 1st Session 17).

5. *Department of Labor Position.* Section 3304(a)(8), FUTA, prohibits the denial of UC to an individual undertaking training ''with the approval of the State agency.'' In the *1970 Draft Legislation,* the Department stated that ''each State is free to determine what training is appropriate'' and ''what criteria are established for approval of training.'' As a result, the *1970 Draft Legislation* provided only suggested criteria. Since then, the Department has, however, required that States apply ''reasonable'' criteria for the approval of training, and taken the position that the refusal of approval of training solely because the training is conducted in another State would be inconsistent with Sections 3304 (a)(8) and (a)(9)(a), FUTA. (*See* UIPL 1276, Section (A)(4)).

Limiting approval of training to that within a State would create an unreasonable burden on an individual residing in or filing a UC claim from another State, with the result that the individual would be discouraged from participating in training. In cases where such individuals cannot reasonably be expected to commute to training in a State in which they do not reside, individuals would have no choice but to choose between attending training or receiving UC. This result would be inconsistent with the expressed intent of Congress in enacting the approved training provision.

Further, Section 3304(a)(9)(A), FUTA, precludes denial of UC to an individual who files a claim or resides in another State (or a contiguous country with which the United States has an agreement with respect to UC) at the time he or she files a claim for UC. A State's refusal to approve training *solely* because it is conducted in another State is plainly inconsistent with this requirement. This result is also plainly inconsistent with the expressed intent of Congress since it inhibits the individual's mobility.

Limiting approval of training to institutions certified by the State Board of Education, or a similar State entity, also limits the approval of training to that undertaken within the State. This creates the same problems with Federal law as discussed in the two preceding paragraphs. States wishing to limit training to certified institutions must, therefore, provide for the approval of training taken at an institution certified by the State Board of Education or similar entity in the State in which the institution is located.

If the individual is attending training in another State, sufficient information must be collected to determine if the individual is attending training which is approvable under the appropriate State law. For interstate claims, the authority to approve training rests with the liable State. However, the liable State may adopt a determination by the agent State approving training for a particular individual or delegate such authority to the agent State. In fact, liable States should place as much reliance as possible on the recommendation of the agent State since the agent State is usually in the best position to know the individual's personal situation and its own labor market. Similarly, in a combined-wage claim, the paying State has the authority to approve training. The paying State may also adopt a determination by another State or delegate the authority for approval of training to the other State. Further, a transferring State must transfer wages and reimburse the paying State as provided in 20 CFR Part 616, without regard to approval of training by the paying State. The paying State may not refuse to approve training solely because the individual has no (or insufficient) covered wages or employment to qualify for benefits in the paying State.

6. *Action Required.* States are to examine their current law, regulations, and procedures relating to the approval of training for individuals who reside in another State or who have filed either interstate or combined-wage claims and determine whether the current law, regulations, and procedures conform to the requirements of Federal law. If they do not, the State must notify the appropriate Regional Office of the Department of Labor as to how and when the law will be amended or the regulations and procedures changed.

7. *Inquiries.* Inquiries should be directed to your Regional Office.

[FR Doc. 95–27101 Filed 10–31–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00278; NAFTA–00278C]

ABEPP Acquisition Corporation d/b/a Abbott & Company Marion, Ohio; Lafayette, Georgia; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 16,