U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	**CLASSIFICATION** UI **CORRESPONDENCE SYMBOL** TEURL **DATE** June 19, 1995

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 22-87 CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : MARY ANN WYRSCH Mary Ann Wyrsch ERJ
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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.

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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 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.