

U.S. DEPARTMENT OF LABOR Employment and Training Administration Washington, D.C. 20213	CLASSIFICATION
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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 41-83

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : ROYAL S. DELLINGER *Royal S. Dellinger*  
 Deputy Assistant Secretary  
 for Employment and Training

SUBJECT : Amendments Made by P.L. 98-21 (Social Security Act Amendments of 1983), Which Affect the Federal-State Unemployment Compensation Program

1. Purpose. To advise State agencies of certain amendments made by the subject act to Title III of the Social Security Act (SSA); the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA); Sections 3303(f), 3304(a) and 3306(b) of the Federal Unemployment Tax Act (FUTA).

2. References. Sections 324 through 329, 515, and 521 through 524 of P.L. 98-21.

3. Background. The amendments in P.L. 98-21, approved on April 20, 1983, made numerous changes in provisions of the Federal law which impact on State unemployment compensation programs. Several of the changes made to the Federal law by P.L. 98-21 are being handled in separate unemployment insurance program letters and will not be addressed in this letter. The changes being treated separately include: 1) the provisions in Sections 501 through 505 of P.L. 98-21 which extended the Federal Supplemental Compensation Act (See General Administration Letter No. 2-83, Change 2), and 2) the provisions in Sections 511 through 514 which relate to the cap on FUTA tax credit reductions, the definition of average employer rates as used for purposes of those provisions, and the provision establishing the due dates for State payment of interest on Title XII loans (See UIPL No. 31-83, issued June 29, 1983).

RESCISSIONS	EXPIRATION DATE
	September 30, 1984

DISTRIBUTION

4. Amendments Made by Sections 515 and 521-524 of P.L. 98-21  
The matters to be addressed herein include those changes made by Sections 515, and 521 through 524 respectively, which provide for:

(a) withholding certification of a State law for tax credits under Section 3304(c), FUTA, and administrative grants under Section 303(c), SSA, if a State fails to pay the interest required on advances under Title XII by the date such interest is required to be paid;

(b) revision of the optional between terms denial applicable to nonprofessional employees, the vacation or holiday recess denials and the denial allowed to be made applicable to educational service agencies by clauses (ii), (iii) and (iv) of Section 3304(a)(6)(A) so that as of April 1, 1984 each of those optional provisions will be mandatory requirements for certification purposes;

(c) an optional denial pursuant to new clause (v) of Section 3304(a)(6)(A), FUTA, that may be applied in the same circumstances as described in clauses (i) through (iv) to employees of a nonprofit organization or governmental entity who provide services to or on behalf of an educational institution;

(d) revision of the actively seeking work requirement applicable to extended benefit claimants under Section 202(a)(3)(A)(ii), EUCA, in a manner which provides States with the option of applying the week by week availability requirement to such claimants rather than the 4 x 4 disqualification, if their failure to seek work is because they 1) are serving on jury duty, or 2) are hospitalized for treatment of an emergency or life-threatening condition;

(e) amendment of the withdrawal standard applicable to monies in a State UI trust fund under Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, to permit a State to deduct an amount from unemployment compensation otherwise payable to an individual and use that amount for health insurance premiums if the individual elected to have such deduction made under a health insurance program approved by the Secretary of Labor; and

(f) extension of the authorization permitting States to allow use of prior positive balances as a contributing employer for reimbursing benefit costs in the case of employers whose tax status is changed retroactively from that of an organization described under Section 501(c)(4) of the Internal Revenue Code of 1954 (IRC), to a 501(c)(3) organization if the organization elects the reimbursing method before the earlier of January 1, 1984 or the date 18 months after such election was first available to it under the State law.

5. Explanation of Changes Made by P.L. 98-21  
Attachment I provides explanations and interpretative guidelines for each of the above described amendments made by Sections 515 and 521 through 524 on a section basis as well as their effective dates. Draft language for changes needed in State laws to satisfy the new requirements by reason of the amendments made by Sections 521, 522 and 523 of P.L. 98-21 are provided in Attachment III. (Note: Suggested language is not provided for the amendments in Section 515.)

In addition to all of the above described provisions, Section 324 through 329 of P.L. 98-21 also amended the definition of "wages" in FUTA. The applicability of those changes and the manner in which they will be interpreted are the responsibility of the Secretary of Treasury. However, for the convenience of the States, we are providing the text of the changes made by those sections and a brief explanation in Attachment II to this UIPL.

6. Action Required. SESAs are requested to take the necessary action to assure consistency of State law with the Federal law requirements as amended by P.L. 98-21.

7. Inquiries. Inquiries should be directed to your regional offices.

8. Attachments:
- I - Explanation and Interpretation of Amendments
  - II - Explanation and Text of Amendments Made to Definition of Wages Under FUTA
  - III - Suggested Draft Language for Implementation of Sections 521, 522 and 523 of P.L. 98-21

Section by Section Explanation and Interpretation  
of Amendments Made by Sections 515 and 521  
Through 524 of P.L. 98-21

1. Section 515--Sanctions for Failure to Pay Interest

Section 303(c) of the Social Security Act is amended by the addition of a new paragraph (3), and Section 3304(a) of FUTA is amended by redesignating paragraph (17) as paragraph (18) and by inserting a new paragraph (17). New paragraph (3) of Section 303(c) provides that if any interest due on advances under Title XII of the Social Security Act is not paid by the due date, or if such interest has been paid directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by the State from amounts in its unemployment fund, the Secretary shall make no certification for payment of a grant to the State for administration of its unemployment compensation law until the interest due has been properly paid.

New paragraph (17) of Section 3304(a) includes requirements similar to those of new paragraph (3). Failure to conform the State law to, or to comply with, those requirements will be grounds for withholding certification of a State under Section 3304(c), FUTA, on October 31 of any year beginning with 1983. With respect to both the new Title III and the new FUTA requirements, certification may be withheld by the Secretary of Labor only after he has offered the State agency an opportunity for a hearing on the matter and he has made a finding adverse to the State. As in the case of other requirements, the State has a statutory right to seek review of the Secretary of Labor's finding by a United States Court of Appeals.

States must include provisions in their laws consistent with Section 3304(a)(17). States should, in addition, assure that proper measures are taken to pay interest, from funds other than the State's unemployment fund, in a timely manner to preclude the loss of certifications as described above.

Due Dates for Payment of Interest

Interest, when payable, is due on various dates depending on particular circumstances. If there is an outstanding balance of an advance or advances made during the 12-month period from October 1 to September 30 (the Federal fiscal year), interest is

ordinarily due before the first day of the following fiscal year (October 1). If, however, an advance was made in the last five months of a fiscal year (May, June, July, August, or September), a State may, at its option, defer payment of interest due until the last day of the following calendar year (December 31). Interest does not accrue on such deferred interest.

If there was repayment in full of an advance or advances made in the same calendar year (a cash flow loan) to avoid interest, but there is a subsequent advance after September 30 of the same calendar year, interest on the repaid advance or advances will become due and payable on the day after the date of such subsequent advance.

If a State's insured unemployment rate (IUR) was at least 7.5 percent during the first six months of the preceding calendar year, it may, at its option, defer payment of, and extend the payment for, 75 percent of the interest charges due before October 1. One third of the deferred interest, i.e., 25 percent of the original amount is due and payable before October 1 of each of the following calendar years. Interest does not accrue on such deferred interest.

With respect to interest due before October 1 of 1983, 1984, and 1985 (other than interest previously deferred), a State may, at its option, pay 20 percent and defer 80 percent in four annual installments equal to at least 20 percent of the original amount, under conditions set forth in paragraph (8) of Section 1202(b) added by Section 511(a) of P.L. 98-21.

Any interest due before October 1 may be deferred, at a State's option, without interest on such deferred interest, for a grace period not exceeding 9 months (i.e., before the following July 1) if, for the most recent 12-month period for which data are available, the State's average total unemployment rate (TUR) was at least 13.5 percent. This deferral authority is provided by paragraph (9) of Section 1202(b) added by Section 511(a) of P.L. 98-21.

Sections 303(c)(3) and 3304(a)(17) apply to any failure to pay interest by the above-described due dates. The first interest due date to which these provisions apply is September 30, 1983.

#### Effective Date

The above described change to FUTA and SSA became effective upon enactment of P.L. 98-21, which was April 20, 1983.

2. Section 521--Treatment of Employees Providing Services to Educational Institutions

Section 3304(a)(6)(A), requires that a State law, as a condition for approval of Federal unemployment tax credit by the Secretary of Labor, provide that benefits be payable based on services performed for State and local government entities and certain nonprofit organizations in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered service. Prior to amendment by P.L. 98-21, the only permitted exceptions to this "equal treatment" requirement were specified in clauses (i) through (iv) of that same subparagraph as described briefly below. (Note: The word "professional" is used herein for convenience in referring to individuals working in an instructional, research or principal administrative capacity while the word "nonprofessional" will refer to services performed in all other capacities.)

Clause (i) requires the denial between academic years or terms of benefits based on professional work for any educational institution under certain conditions. Clause (ii)(I) permits the denial between academic years or terms of benefits based on nonprofessional work for any educational institution, under certain conditions. Clause (iii) permits the denial during an established and customary vacation or holiday period based on professional work or nonprofessional work for any educational institution, under certain conditions. Clause (iv) permits the denial as specified in clauses (i), (ii), and (iii) of benefits based on services described in clauses (i) or (ii) to "any individual who performed such services in an educational institution while in the employ of an educational service agency" (ESA). P.L. 98-21 amended Section 3304(a)(6)(A), FUTA, by adding a new optional clause (v) and made the provisions in clauses (ii) through (iv) mandatory rather than optional.

Specifically, Section 521(a)(1) of P.L. 98-21 amended Section 3304(a)(6)(A), FUTA, by adding new clause (v) as follows:

"(v) with respect to services to which section 3309(a)(1) applies, if such services are provided to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) through (iv), and..."

The provisions in new clause (v) provide States with the option to deny benefits under the conditions specified by clauses (i) through (iv) to individuals who are not subject to the provisions

in those clauses because they are not employees of an educational institution or performing services for an educational institution while in the employ of an educational service agency as that term is specifically defined in clause (iv). As written it will permit States at their option to apply the denials in those clauses to benefits based on any services performed by employees of a non-profit organization or a governmental entity who provide services to or on behalf of an educational institution. However, if adopted, the provision must be accepted in toto and must be applied equally to all classes of services, both professional and nonprofessional, and must apply equally to all categories of services within classes. Patterns of denial that would provide distinctions between either classes or categories of services would be inconsistent with clause (v).

In addition, Section 521(a)(2) of P.L. 98-21 amended Section 3304(a)(6)(A) to provide as follows:

"Clauses (ii)(I), (iii), and (iv) of such sections are each amended by striking out "may be denied" and inserting in lieu thereof "shall be denied".

This amendment to the cited clauses in Section 3304(a)(6)(A), FUTA, means that the States no longer have the choice of applying the provisions of those clauses at their election, and instead are now required to do so as a condition for certification of the State law. Accordingly, for consistency with the new mandated requirements all States must: 1) deny benefits based on nonprofessional services performed by employees of an educational institution between academic years or terms under clause (ii)(I); 2) deny benefits based on professional and nonprofessional services performed by employees of an educational institution during an established and customary vacation period or holiday recess under clause (iii); and 3) deny benefits based on professional and nonprofessional services performed by employees of an ESA who perform such services in an educational institution between academic years or terms or during an established and customary vacation period or holiday recess under clause (iv).

Both of the above changes made by Section 521(a)(1) and (2) of P.L. 98-21 become effective in the case of compensation payable for weeks beginning on or after April 1, 1984. An additional provision provides a grace period beyond the April 1, 1984 effective date for meeting the mandatory requirements imposed by Section 521(a)(2) of P.L. 98-21. The explanation for this grace period is provided under a specifically identified heading at the end of the discussion on this section.

Application of Optional Clause (v) of Section 3304(a)(6)(A), FUTA

Prior to enactment of the optional clause (v) provision added to Section 3304(a)(6)(A), FUTA, by Section 521(a)(1) of P.L. 98-21, States were not permitted to deny benefits "between terms" and "within terms" or during an "established and customary vacation period or holiday recess" to any employee of a governmental entity or nonprofit organization who "provided" services "to or on behalf of" an educational institution. They could deny benefits during the prescribed periods only if the individual was in the employ of the educational institution. The only exception was the denial allowed under the terms in clause (iv) of Section 3304(a)(6)(A) which was limited to services performed by an employee of an ESA who performed services in an educational institution. Even under clause (iv) any services provided by an employee of the ESA to or on behalf of the ESA are not subject to the denial provisions, unless the services are performed in the educational institution.

The optional denial provision of clause (v) relaxes the employee-employer relationship requirement in clauses (i) through (iv) by allowing the denial to be applied if the services were "provided to or on behalf of an educational institution" irrespective of an employment relationship with the educational institution. Specifically, employees of a State or local governmental entity or a nonprofit organization who provide services "to or on behalf of" an educational institution can be denied benefits in the same circumstances as described in clauses (i) through (iv) pursuant to new optional clause (v). The organizational structure or function of such entities or organizations is of no consequence for purposes of clause (v). They are not required to be established and operated exclusively for purposes of providing services to or on behalf of an educational institution. (This latter requirement applies solely to an educational service agency under the provisions of clause (iv)).

The words "on behalf of" are not specifically defined in the statute, and in the absence of an express definition, we believe the terms must be given their common, ordinary meaning. According to The American Heritage Dictionary, 1976 edition, published by Houghton Mifflin Company, Boston, the term "behalf" is defined to mean "interest, support, or benefit." However, it has a distinctly different meaning when used in the phrase "on behalf of" as opposed to "in behalf of". The two are not interchangeable. As used in the phrase "on behalf of" it is restricted to situations in which the individual acts "as the agent of", or "on the part of" someone

else. In the context of the provision in which the words are used, we believe it must be construed to apply only to those employees of governmental entities or nonprofit organizations who perform services as an agent of or on the part of an educational institution. This situation could arise, therefore, only where an employee of a governmental entity or nonprofit organization performed services as an agent of or on the part of an educational institution in such a representative capacity. For example, a school board attorney acting in such a capacity in performing services in the employ of the school board could be denied benefits under a clause (v) provision of the State law during periods of unemployment if all of the conditions provided in clauses (i), (ii), or (iii) were met.

The words "provided to" in clause (v) are less restrictive than "on behalf of", and do not require that the individual be acting as the agent of or in a representative capacity for the educational institution. It requires only that the services provided to the educational institution give some benefit or support to the institution. For example, under clause (v), employees who perform services as school crossing guards and who are employed by a "City Department of Law Enforcement," or employees who perform services as school bus drivers and who are employed by a "City Department of Transportation", or cafeteria workers employed by the State or local government or a nonprofit organization, may be denied benefits under the same circumstances as described in clauses (ii) through (iv). In such cases such individuals may be considered as providing services to the educational institution since they supported transportation needed for the institution, provided safety measures for and satisfied nutritional needs of its students.

This situation could also arise in the case of services performed by employees of an educational service agency (ESA) who perform their services in the ESA rather than in the educational institution. The services may consist of administrative functions such as establishing course criteria or schedules. The individuals performing such services for an educational institution can not be denied benefits during the prescribed period pursuant to clause (iv) of Section 3304(a)(6)(A) since their services are not performed in the educational institution as required by those provisions. However, they can be denied benefits for those periods if a State includes the optional clause (v) in its law. Their services would be considered to have been "provided to" the educational institution, and if all other conditions provided in clauses (i) through (iii) were met, then benefits could be denied accordingly.

In addition, since clause (v) provides that benefits "may be denied under the same circumstances as described in clauses (i)

through (iv)," a State will be allowed to deny benefits to individuals providing services to or on behalf of an educational institution only if each of the conditions prescribed by those clauses has been satisfied. That is, benefits may be denied only for the periods between academic years or terms (or for a similar period between two regular but not successive terms as specified in clause (i)) and during an established and customary vacation period or holiday recess. Furthermore, the individual must have performed the services in the first of such academic years or terms, or immediately before such vacation period or holiday recess, and must have a reasonable assurance (contract or reasonable assurance in the case of employees who perform professional services) that such services will be performed after the designated periods. Additionally, the required retroactive payment of benefits provided for nonprofessional employees under Section 3304(a)(6)(A)(ii)(II), FUTA, must also be applied under the same terms and conditions as specified therein to denial on the basis of nonprofessional services performed by employees of governmental entities and nonprofit organizations that provide services to or on behalf of an educational institution. In other words, every aspect of the conditions provided in clauses (i) through (iv) must be applied to individuals whose services fall within the purview of clause (v) in order to deny them benefits consistent with the Federal law requirements. It is not enough that they simply provide services to or on behalf of an educational institution.

Mandatory Denial of Benefits to Employees Performing Services for an Educational Institution Under Clauses (ii), (iii), and (iv) of Section 3304(a)(6)(A), FUTA

Section 521(a)(2) of P.L. 98-21 amended Section 3304(a)(6)(A)(ii)(I), (iii), and (iv), FUTA, by establishing as a condition for certification for tax offset credit by the Secretary of Labor that States amend their laws to require denial of benefits to employees performing services for an educational institution in the circumstances prescribed by the above cited clauses. Prior to the amendment made by Section 521(a)(2) of P.L. 98-21 States could enact all or certain prescribed parts of clauses (ii) through (iv) at their option. For instance, instead of requiring a reasonable assurance as specified under clause (ii), the State law could include a more restrictive provision requiring a contract to return to work in the next year or term. Also, under those optional provisions, a State could have decided to enact the option only partly with respect to either professional or nonprofessional services. The optional feature in those clauses offered the States those alternatives. However, now that

the provisions in these clauses are mandated by Federal law those distinctions are no longer permissible. As in the case of the required provisions in clause (i) States must deny benefits to the full extent of and consistent with the requirements in clauses (ii) through (iv). Consequently, States that previously exercised the options by making distinctions as described above must amend their law to assure that those distinctions are no longer applicable. Conversely, States that have not provided for the denial of benefits to employees performing services for educational institutions under the circumstances and in the capacities described in clauses (ii) through (iv) of amended Section 3304(a)(6)(A), FUTA, must amend their laws to provide for denial of benefits as provided in those clauses.

We recommend that States carefully follow the draft language provided in Attachment III of this UIPL when preparing State legislation modeled on clauses (ii), (iii), and (iv) of Section 3304(a)(6)(A), FUTA, for consistency with Federal law requirements.

The above paragraphs supersede Question and Answer 2, p. 7 on the same subject in Supplement 3, 1976 Draft Legislation, dated May 6, 1977, to the extent it authorizes clause (iii) to be applied only in part or describes those provisions as optional. It also supersedes the paragraphs in Question 1 and Answer on page 21 of Supplement 5, 1976 Draft Legislation, dated November 13, 1978 which formerly permitted States to require a written contract rather than a reasonable assurance in applying the between-terms denial provided by Section 3304(a)(6)(A)(ii), FUTA.

#### Effective Date of Provisions in Section 521

The provisions of Section 3304(a)(6)(A), FUTA as amended by Section 521 of P.L. 98-21 will require changes in current State laws that have not adopted all or only parts of the between terms and within terms denial provisions contained in provisions modeled on clauses (ii), (iii), and (iv) of section 3304(a)(6)(A). Such changes will be necessary for conformity with the new Federal law requirements in Section 3304(a)(6)(A), FUTA. Adoption of the provisions in clause (v) is entirely optional with the States.

Section 521(b)(1) of P.L. 98-21 provides that the amendment made by Section 521 "shall apply in the case of compensation paid for weeks beginning on or after April 1, 1984." Albeit, a State may enact or modify existing provisions for consistency with clauses (ii), (iii), and (iv) of Section 3304(a)(6)(A), FUTA, prior to the April 1, 1984 effective date.

Similarly, a State may enact a provision to implement clause (v) prior to the April 1, 1984 effective date. A State is not required to enact clause (v), but if it decides to do so, it must adopt the provision in toto, as described herein, may not adopt only part of it, and may not apply the denial authorization beyond the express terms of the Federal statute.

Additional Time Allowed to Amend State Law to Conform With Amended Clauses (ii), (iii) and (iv) of Section 3304(a)(6)(A), FUTA

There is an exception to the April 1, 1984 effective date for implementation of the requirements in clauses (ii) through (iv) of Section 3304(a)(6)(A). States are provided additional time to add to or amend provisions in their State laws to conform with the requirements imposed under Section 521(a)(2) of P.L. 98-21 where the Secretary of Labor determines that legislation is necessary for consistency with the amendments made by that section. Specifically, Section 521(b)(2) provides that:

"In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to comply with the amendment made by this section, the amendment made by this section shall apply in the case of compensation paid for weeks which begin on or after April 1, 1984, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act, or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."

Pursuant to the above quoted provisions when the Secretary of Labor determines, after analysis of the State laws and appropriate inquiry of the States involved, that legislation is needed to conform with amended Section 3304(a)(6)(A) for weeks beginning on or after April 1, 1984, the State may be given additional time to amend its law for this purpose. The State will have until the end of the first session of the State legislature which begins after April 20, 1983 (the date of enactment of P.L. 98-21), or April 1, 1984, whichever is later. If the State legislature is in session on April 20, 1983 and remains in session thereafter for at least 25 calendar days, the April 1, 1984 date is applicable to that State. The "session" to which paragraph (2) applies is

specifically defined to include a regular, special, budget, or other session of the State legislature and it is irrelevant whether within that 25 days the legislature meets or is in recess. For example, if the State legislature first meets in session on January 4, 1984, and adjourns on June 6, 1984, the amendments in Section 521 of P.L. 98-21 would be effective with respect to that State for weeks which begin after June 6, 1984. If the session ended before April 1, 1984, the required effective date for the subject amendments would be April 1, 1984 rather than the earlier ending date on which the legislature adjourned.

Because of the different periods that State legislatures are in session, the effective dates for the amendments in Section 521 for those States given the so-called "grace period" provided therein, will vary depending on the beginning and ending dates of such sessions. State agencies will be asked to confirm the status of their parallel State law provisions modeled on Section 3304(a)(6)(A), FUTA, and about the need for legislative amendments. If the analysis made of the State law and information provided by the States indicates that legislative action is needed, it will form the basis for a determination by the Secretary allowing a "grace period" as provided in paragraph (2).

3. Section 522--Application of Actively Seeking Work Requirement to EB Claimants Who Are Hospitalized Or Are On Jury Duty

Under the terms of the provisions in Section 202(a)(3)(A)(ii) of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), a State law must provide that an extended benefit claimant who fails to actively engage in seeking work will be disqualified for the week in which such failure occurred and until he or she has been employed at least 4 weeks and earned a total of at least 4 times the individual's extended weekly benefit amount (4 x 4 disqualification). This requirement is applicable to extended benefit claimants irrespective of provisions in State laws which excuse claimants for regular benefits from the active search for work provisions in any week that the individual is not actively seeking work because of jury duty or emergencies requiring hospitalization.

This prohibition against application of provisions of this type to extended benefit claimants has now been relaxed by revisions made to Section 202(a)(3)(A)(ii) by Section 522 of P.L. 98-21. As revised that section now provides that payment of extended compensation shall not be made to an individual for any week:

"(ii) during which he fails to actively engage in seeking work [.] unless such individual is not actively engaged in seeking work because such individual is, as determined in accordance with State law-

(I) before any court of the United States or any State pursuant to a lawfully issued summons to appear for jury duty (as such term may be defined by the Secretary of Labor), or

(II) hospitalized for treatment of an emergency or a life-threatening condition (as such term may be defined by such Secretary),

"if such exemptions in clauses (I) and (II) apply to recipients of regular benefits, and the State chooses to apply such exemptions for recipients of extended benefits." (New language underlined, bracketed language deleted.)

The purpose of the above amendments is to allow States that apply corresponding provisions in their laws to claimants for regular benefits, to also apply them to claimants for extended benefits. If a State so elects, the active search for work requirement in the provision quoted above will not apply for any week that an individual satisfies the conditions in clause (I) or (II). However the option may not be applied solely to extended benefit claimants. The exemptions may be applied by a State to extended benefit claimants only if "recipients of regular benefits" are also exempted under the State law from the active search for work requirements in the specified circumstances. That means that no distinctions can be made between claimants for regular or extended benefits in applying the State law as authorized by the amendment to Section 202(a)(3)(A)(ii) by Section 522.

However, a State is not required to apply both of the exemptions allowed by clauses (I) and (II) if it does not choose to do so. It has the option of electing either one or the other of the two exemptions and apply it to claimants for extended benefits. Whatever the choice it must be made applicable to both claimants for regular and extended benefits.

The conditions under which an individual may be exempted from the 4 x 4 disqualifications are specifically set forth under clauses (I) and (II). Under clause (I) an exemption is allowed if a State determines pursuant to its law, that the failure to

actively seek work was because the individual was serving on jury duty. The jury duty must be required by a lawfully issued summons which orders the individual to appear for such duty before a court of either the United States or a State.

Under clause (II) an extended benefit claimant can be relieved of the 4 x 4 disqualification only if he or she has been actually hospitalized. Furthermore, the exemption only applies in cases where the individual has been hospitalized as an inpatient "for treatment of an emergency or a life-threatening condition." The exemption cannot be allowed if the treatment given by the hospital is not for the designated purposes.

Under clauses (I) and (II) the terms "jury duty" and hospitalized for treatment of an "emergency or a life-threatening condition" are as such terms may be defined by the Secretary of Labor. Accordingly, these terms are defined generally as follows:

The term "jury duty" means the performance of service as a juror, during all periods of time an individual is engaged in such service, in any court of a State or the United States pursuant to the law of the State or the United States and the rules of the court in which the individual is engaged in the performance of such service."

The phrase "hospitalized for treatment of an emergency or life-threatening condition" has the collective meaning of each of its terms within the context of that phrase. An individual is "hospitalized" when admitted to a hospital as an inpatient for medical treatment. Treatment for an "emergency or life-threatening condition" shall be considered for those purposes if determined to be such by the hospital officials or attending physician that provide the treatment for a medical condition existing upon or arising after hospitalization. For purposes of this definition the terms "medical treatment" refer to the application of any remedies which have the objective of effecting a cure of the emergency or life-threatening condition. Once an "emergency condition" or a "life-threatening condition" has been determined to exist, the status of the individual as so determined shall remain unchanged until release from the hospital.

Since application of these exemptions is to be "as determined in accordance with State law", the above

terms have been defined broadly to set only the outer bounds of those terms. This leaves the State the choice to establish the exemptions anywhere within those bounds. Therefore in adopting the amendment authorized by Section 202(a)(3)(A)(ii), a State may adopt either or both exemptions to the full extent permitted by the definitions given above, or it may adopt more narrowly drawn definitions to limit the scope of the exemption. Adoption of either of these exemptions by a State must be accomplished, however, by the inclusion of provisions in the State's unemployment compensation law which are applicable to claimants for regular benefits as well as claimants for extended benefits.

The definitions given the terms above will be incorporated in amendments to the extended benefit regulations at 20 CFR Part 615 which will be published as proposed regulations with opportunity for comments. In the meantime, the definition as stated above will be applied.

It is emphasized however, that these exemptions from the actively seeking work requirement for EB claimants may be applied by the States only to the extent of and under the conditions prescribed by clauses (I) and (II). State law provisions applicable to claims for regular benefits which go beyond or are different from these conditions for excusing an individual from the active search for work requirement still cannot be applied to extended benefit claimants. This would be the case for example, where State laws permit exemption from the active search for work requirements for claimants who are not actively seeking work because of illness not requiring hospitalization or hospitalization for treatment of other than an emergency or life-threatening condition, or because of disability, death in the family and other reasons. None of those situations are recognized under revised Section 202(a)(3)(A)(ii), EUCA, and consequently, those State laws which recognize them may not operate to exempt individuals who file claims for extended benefits from the 4 x 4 disqualification in cases where the failure to actively seek work resulted from such causes.

#### Effective Date

The amendments made to Section 202(a)(3)(A)(ii), EUCA, as described above became effective on the date of enactment of P.L. 98-21, which was April 20, 1983.

4. Section 523--Deductions From Unemployment Benefits For Health Insurance Premiums

Under the provisions of Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, monies withdrawn from an unemployment fund of a State must be used solely for the payment of unemployment compensation with certain specified exceptions. Both of these provisions were amended by Section 523 of P.L. 98-21 to permit States to make deductions from the amount of benefits payable to an individual at the option of the individual, and use those deductions for paying health insurance premiums under a program for such insurance that has been approved by the Secretary of Labor.

Specifically, Section 3304(a)(4) FUTA was amended by adding the following new subparagraph (C):

"(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor".

In similar fashion, Section 303(a)(5), SSA, was amended by adding the following new provision at the end thereof:

"Provided further, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor; and".

These two provisions require specific implementing language in State law to establish the conditions under which a State may deduct sums from an individual's entitlement to unemployment compensation for the designated purpose. Specifically, the deduction may be made by the State only if the individual elects to have the State do so. The individual's election to have the amount deducted is essential if the deductions are to be made consistent with the new conditions contained in FUTA and the

SSA. A State may not require mandatory deduction of monies from the claimant's unemployment compensation for this purpose.

Furthermore, the deduction must be used only "to pay for health insurance." That phrase is interpreted as applying only to payments for the premiums required by the provisions of an approved health insurance program. Premiums for this purpose only include the sum of money agreed to be paid by the insured claimant to the underwriter as consideration for the insurance. Deductions for any other purpose or use in connection with the health insurance program would not be permissible under the Federal law authorization.

Additionally, deductions may be made only for premiums payable under a health insurance program that has been approved by the Secretary of Labor. No deductions are allowed for programs that have not received such approval.

The criteria that are being established for approval of health insurance programs and the procedures applicable for obtaining such approval are being provided in a separate program letter. That program letter also will include instructions on funding the costs of administering the health insurance program in a State.

#### Impact of Waiver Provisions Under State Laws

Since all State laws contain provisions voiding any agreement to waive benefit rights or any assignment of benefits, States should consider whether it is necessary to amend such provisions to permit proper implementation of deduction provisions for a health insurance premium. Amendments for this purpose should be carefully phrased to avoid interpretations allowing any expansion of the exception allowed to the withdrawal requirements in State law provisions corresponding to Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA.

#### Effective Date

The amendments made to Section 3304(a)(4), FUTA and Section 303(a)(5), SSA as described above took effect on the date of enactment of P.L. 98-21, which was April 20, 1983.

#### 5. Section 524--Treatment of Certain Employers Granted Section 501(c)(3) Status

Unemployment insurance coverage was extended in 1972 to employees of nonprofit organizations described in section 501(c)(3) of the

Internal Revenue Code of 1954 which are exempt from income tax under section 501(a) of the Code, pursuant to P.L. 91-373, which also gave those organizations the option of financing benefits through reimbursements rather than contributions. Prior to 1972, some of those organizations had elected unemployment insurance coverage for their employees and had paid contributions. The 1976 amendments (P.L. 94-566) extended coverage to practically all non-profit organizations in 1978 and also included the option of making payments (reimbursements) rather than contributions as a method of financing benefits.

Those nonprofit employers who had voluntarily covered their employees prior to enactment of P.L. 91-373 and P.L. 94-566 and had been required to finance their benefit costs by the contributions method, and chose after passage of the 1970 and 1976 UI legislation to switch to the reimbursement method of financing, were permitted to apply any positive balance in their experience rating accounts toward benefit costs incurred later and paid for on a reimbursement basis. However, authority to take advantage of such an offset was available for only a short time after enactment of the legislation.

As a result of the provisions in Section 524 of P.L. 98-21, the above described offset has been made available again for certain organizations that have been determined to be 501(c)(3) organizations retroactively. Specifically, a State may, at its option, permit certain nonprofit organizations that switch from the contributions to the reimbursement method to apply an accumulated balance in its experience rating account to claims costs incurred after the switch, if the switch occurs under the following conditions and involves the following organizations:

1. The organization did not elect the reimbursement option under prior authority because before April 1, 1972, it was treated as a Section 501(c)(4), Internal Revenue Code of 1954 (IRC), organization by the Internal Revenue Service (IRS):
2. The IRS subsequently determined such organization to be retroactively a Section 501(c)(3), IRC, organization;
3. Such organization elects to switch to the reimbursement method before the earlier of 18 months after such election was first available to it under State law or January 1, 1984; and
4. Such organization paid contributions before January 1, 1982.

Section 524 of P.L. 98-21 provides that if the organization meets the conditions stated above, then Section 3303(f) shall be applied as though it did not contain the requirement that the election to reimburse benefits be made before April 1, 1972 and did contain "January 1, 1982" in place of "January 1, 1969."

As indicated by the above described conditions in item 1, the State may only apply these provisions to organizations that were formerly exempt under section 501(c)(4). The provision has no applicability to organizations that were previously classified under some other provisions of Section 501(c), IRC. Note also that Section 3303(f), FUTA, can apply to groups of nonprofit organizations in the same manner that it applies to a single nonprofit organization.

If the nonprofit organization meets all of the above conditions, then the State may provide by law that the organization will not be required to make any reimbursement payments until the total of compensation claimed and paid equals the amount--

1. by which the contributions paid by the organization, during a period specified by the State and before the election, exceed
2. the unemployment compensation for the same period which was charged to the experience rating account of the organization or paid under the State law on the basis of wages paid by it or service performed in its employ, whichever is appropriate.

The draft legislation and most of the Commentary in DRAFT LEGISLATION to Implement the Employment Security Amendments of 1970 ... H.R. 14705 will help explain the manner in which a State may apply the above described provisions in Section 3303(f), FUTA, as they pertain specifically to the use of prior contributions to offset current benefit reimbursements.

Explanation of Amendments Made to Definition of  
"Wages" Under FUTA .

Section 324(b), 327(c), and 328(c), P.L. 98-21, Definition of "Wages"

The definition of "wages" in FUTA was amended in a number of respects by the addition of new subsection (r) to Section 3306 and by amendment of subsection (b) of Section 3306. These changes impact on certain fringe benefits that include cash or deferred arrangements, tax-sheltered annuities, and nonqualified deferred compensation plans. Under a cash or deferred arrangement forming a part of a qualified profit-sharing plan or stock bonus plan, a covered employee may elect to have the employer contribute an amount to the plan on the employee's behalf or to receive such amount directly in cash. Under a cafeteria plan, so-called, an employee may choose among various benefits including cash, taxable benefits and nontaxable benefits (including a cash or deferred arrangement) offered under the plan. Amounts paid by an employer under a cash or deferred arrangement (whether part of a cafeteria plan) will be taxable as wages under FUTA.

Subject to certain limitations, amounts paid by the employer for a tax-sheltered annuity for an eligible employee may be excluded from an employee's income. Tax-sheltered annuities may be purchased for employees of educational institutions and certain tax exempt organizations, pursuant to a salary reduction agreement. Amounts paid by a nontaxable employer will not be taxable under FUTA.

Amounts deferred under a nonqualified deferred compensation plan generally are taxable when paid or when there is no substantial risk of forfeiture by the employee, depending on whether the plan is unfunded or funded. Such plans may be used by taxable employers to provide retirement benefits in excess of those permitted under tax-qualified retirement plans or coverage limited primarily to highly compensated or management employees. They are also used by tax exempt employers and by State and local governments. Such amounts will be included in an employee's wage base for benefit purposes when the services are performed or later when there is a lapse of a substantial risk of forfeiture (within the meaning of Section 83 of the Internal Revenue Code) of the employee's rights to such amounts.

Any payment (other than vacation or sick pay) made to an employee after the month when he or she attains age 62, where the employee

did not work for the employer in the period in which such payment is made, will be included as wages if the payment is made with the expectation that the individual will subsequently render services. This provision is effective with respect to remuneration paid after 1983.

In the Rowan decision of June 8, 1981, the U.S. Supreme Court held that "wages" under FUTA do not include the cash value of meals and lodging furnished for the convenience of the employer. (See UIPL 39-81 for further details of the decision). The substance of the decision is codified in FUTA, with a limitation on the reach of the Rowan decision that exclusion from "wages" for income taxation shall not alone be construed to require a similar exclusion for FUTA.

Employer payments to or on behalf of an employee under a simplified employee pension plan (SEP) are excluded from "wages."

Since administration of these provisions is the responsibility of the Secretary of Treasury, any questions concerning their application and interpretation should be directed to the Internal Revenue Service.

All of the amendments described above are effective with respect to wages paid after December 31, 1984, except where explicitly specified otherwise. The amended provisions of Section 3306(b) and new subsection (r) as enacted by P.L. 98-21 are given below.

Text of Amendments Made to Definition  
of "Wages" Under FUTA

3306(b) Wages---. For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include-

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to \$7,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade

or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to \$7,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of--

[(A) retirement, or]

[B] (A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workman's compensation law), or

[C] (B) medical or hospitalization expenses in connection with sickness or accident disability, or

[D] (C) death;

[(3) any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary--

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a), [or]

(D) under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) for such payment, [;]

(E) under or to an annuity contract described in Section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

(F) under or to an exempt governmental deferred compensation plan (as defined in Section 3121(y)(3), or

(G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974.

(6) the payment by an employer (without deduction from the remuneration of the employee)-

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

[ (8) any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made:]

(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217;

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid--

(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, [or (iii) retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer,] and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents), other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(11) remuneration for agricultural labor paid in any medium other than cash;

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans); [or]

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 [.] , or

(14) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119.

Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

\* \* \*

[3306] (r) Treatment of Certain Deferred Compensation and Salary Reduction Arrangements.--

(1) Certain Employer Contributions Treated As Wages.--

Nothing in any paragraph of subsection (b) (other than paragraph (1)) shall exclude from the term "wages"--

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(a)(8), or

(B) any amount treated as an employer contribution under section 414(h)(2).

(2) Treatment of Certain Nonqualified Deferred Compensation Plans.--

(A) In general. - Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of--

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

(B) Taxed only once. - Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) Nonqualified deferred compensation plan. - For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (b)(5). (New language underlined; Bracketed material deleted).

The above language was quoted as amended. The discrepancies noted in the citations for various numbered or lettered sections resulted from the legislative failure to make the needed changes to accommodate the new amendments.

Draft Language to Implement Sections 521, 522 and 523 of P.L. 98-21

1. Section 521--Treatment of Employees Performing Services for or Providing Services To Or On Behalf Of Educational Institutions

The provisions of Section 3304(a)(6)(A), FUTA as amended by P.L. 98-21 will require changes in State laws to provide for all of the between terms and within terms provisions that are now necessary for conformity with amended clauses (ii), (iii), and (iv) of Section 3304(a)(6)(A). Those States that included such provisions in State laws with the modifications previously allowed when the provisions were optional, will need to amend their laws to assure that they apply to the full extent required by the Federal law. Appropriate amendments to the State law will also be necessary for those States that decide to include the new optional clause (v) provision in the State law.

The following draft language is offered for purposes of developing amendments that satisfy each of the requirements in clauses (ii) through (v) of Section 3304(a)(6)(A), FUTA. Changes will have to be made to the section references included herein by substituting citations to the parallel provisions in the State law.

Clause (ii) of Section 3304(a)(6)(A), FUTA

"(B) With respect to services performed in any other capacity for an educational institution benefits shall not be payable on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subparagraph."

States whose laws contain this language but require a contract rather than a reasonable assurance as specified above, must amend their laws by deleting reference to a contract and substitute it where appropriate with the words "reasonable assurance" in order to apply this provision to the full extent required by Federal law.

What constitutes a "reasonable assurance" for the purposes of clauses (i), (ii) and (iii) is set forth on page 54 of the Commentary in the 1976 Draft Legislation, and in Questions and Answers 2, 3, 4 and 7 (pages 17, 18 and 20) of Supplement 1. See also Question and Answer 4 (page 23) of Supplement 5.

Clause (iii) of Section 3304(a)(6)(A), FUTA

"(C) With respect to any services described in subparagraphs (A) and (B), benefits shall not be payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess."

State laws that now include this provision but apply it either to services performed by professional or nonprofessional employees, but not both, must be amended to make them applicable to both classes of services since the State no longer has the option to be selective in applying this provision.

Clause (iv) of Section 3304(a)(6)(A), FUTA

"(D) With respect to any services described in subparagraphs (A) and (B), benefits shall not be payable on the basis of services in any such capacities as specified in subparagraphs (A), (B) and (C) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subparagraph the term 'educational service agency' means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions."

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1/ Cite sections of State law which provide for the between terms denial to professional and nonprofessional employees respectively.

Any State which presently has this provision in its law but limits its application to services performed in either a professional or nonprofessional capacity but not both, must now amend its law to provide for application of the denial of benefits in the prescribed circumstances to both classes of services. The distinction between these services that was previously allowed is no longer permissible under the new mandated requirements.

New Optional Clause (v) of Section 3304(a)(6)(A), FUTA

"(E) with respect to services to which section 3309(a)(1) applies (substitute equivalent State law citation to provisions defining employment for governmental entities and non-profit organizations), if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in subparagraphs (A), (B), (C), and (D), (substitute equivalent State law citations)."

2. Section 522--Application of Actively Seeking Work Requirements to EB Claimants Who Are Hospitalized Or Are On Jury Duty

The changes made to Section 202(a)(3)(A), EUCA by Section 522 of P.L. 98-21 were designed to allow States to apply corresponding provisions in the State law to claims for extended benefits so that those claims are treated in the same manner as claims for regular benefits. However, the dual applicability of such provisions is permissible only to the extent that the provisions of the State law applicable to regular claims are identical to those allowed by Section 202(a)(3)(A)(ii), as amended. As pointed out in Attachment I, State laws that relax the active search for work provision under conditions that go beyond those allowed by Section 202(a)(3)(A)(ii) still cannot apply those conditions for that purpose to claims for extended benefits. Therefore, any amendments or interpretation of State law to implement the authorization in Section 522 must limit application of the State law to extended benefit claimants as prescribed by that authorization.

The following draft language is intended to be used by States that wish to modify the active search for work provisions for extended benefit claimants that is now included in State laws pursuant to the requirements of Section 202(a)(3)(A)(ii), EUCA, to reflect the amendments made by P.L. 98-21. The language revises that

provided to the States on page 1 of the Attachment to UIPL No. 14-81, as follows:

"(h)(1) Notwithstanding the provisions of subsection (b) of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in the individual's eligibility period if the Commissioner finds that during such period:

\* \* \* \* \*

(B) he failed to actively engage in seeking work as prescribed under paragraph (5), unless such individual is not actively engaged in seeking work because such individual is-

(i) before any court of the United States or any State pursuant to a lawfully issued summons to appear for jury duty,

(ii) hospitalized for treatment of an emergency or a life-threatening condition.

The entitlement to benefits of any individual who is determined not to be actively engaged in seeking work in any week for the foregoing reasons, shall be decided pursuant to the able and available requirements in Section 1/ without regard to the disqualification provisions otherwise applicable under Section 2/ . The conditions prescribed in clauses (i) and (ii) of this subparagraph (B) must be applied in the same manner to individuals filing claims for regular benefits. (New language underlined).

1/ Cite section of the State law that prescribes the disqualification applicable to individuals filing claims for regular benefits that fail to satisfy the able and available requirements for the prescribed reasons.

2/ Cite section of the State law that imposes the 4 x 4 disqualification on claimants for extended benefits that fail to actively engage in seeking work.

3. Section 523--Deductions From Unemployment Benefits For Health Insurance Premiums

The amendments to sections 3304(a)(4), FUTA, and section 303(a)(5), SSA, which authorize States to make deductions from the amount of benefits payable in order to pay health insurance premiums for the individual, can be implemented only in accordance with the conditions prescribed by those amendments. This authorization is an exception to the withdrawal standards in the above cited sections, and any expansion of the conditions under which such deductions are allowed that does not fall within the purview of those prescribed, would raise issues of conformity and compliance under those sections.

The following draft language is provided to assure consistency with section 3304(a)(4), FUTA, and section 303(a)(5), SSA, as amended by P.L. 98-21. Additional amendments to the State law may be necessary for provisions in State law voiding agreements to waive benefit rights or prohibitions against assignments of benefits. They too should be narrowly drawn to avoid expansion of the exception being made to those agreements and prohibitions.

"Notwithstanding any other provisions of this chapter to the contrary, an amount equal to the amount payable by an individual for premiums payable under a health insurance program that has been specifically approved by the United States Secretary of Labor shall be deducted from unemployment compensation otherwise payable to an individual, but only if such individual has elected to have such deduction made. For purposes of this section the term 'premium' shall only include the sum of money agreed to be paid by the insured individual to the underwriter as consideration for the insurance."