

a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the workers will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. Information to worker.

1. *Information required to be given.* Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. *Methods for giving information.* The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should

supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 *Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.* If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

PART 603—FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF STATE UC INFORMATION

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Sec.

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SOURCE: 71 FR 56842, Sept. 27, 2006, unless otherwise noted.

Subpart A—In General

§ 603.1 What are the purpose and scope of this part?

The purpose of this part is to implement the requirements of Federal UC law concerning confidentiality and disclosure of UC information. This part applies to States and State UC agencies, as defined in § 603.2(f) and (g).

§ 603.2 What definitions apply to this part?

For the purposes of this part:

(a)(1) *Claim information* means information about:

(i) Whether an individual is receiving, has received, or has applied for UC;

(ii) The amount of compensation the individual is receiving or is entitled to receive; and

(iii) The individual's current (or most recent) home address.

(2) For purposes of subpart C (IEVS), claim information also includes:

(i) Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay; and

(ii) Any other information contained in the records of the State UC agency that is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

(b) *Confidential UC information* and *confidential information* mean any UC information, as defined in paragraph (j) of this section, required to be kept confidential under § 603.4.

(c) *Public domain information* means—

(1) Information about the organization of the State and the State UC agency and appellate authorities, including the names and positions of officials and employees thereof;

(2) Information about the State UC law (and applicable Federal law) provisions, rules, regulations, and interpretations thereof, including statements of general policy and interpretations of general applicability; and

(3) Any agreement of whatever kind or nature, including interstate arrangements and reciprocal agreements and any agreement with the Department of Labor or the Secretary, relating to the administration of the State UC law.

(d) *Public official* means:

(1) An official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

(2) Public postsecondary educational institutions established and governed under the laws of the State. These include the following:

(i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State WDB, commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency

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when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local area as defined in WIOA sec. 3(9).

(5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

(e) *Secretary* and *Secretary of Labor* mean the cabinet officer heading the United States Department of Labor, or his or her designee.

(f) *State* means a State of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(g) *State UC agency* means an agency charged with the administration of the State UC law.

(h) *State UC law* means the law of a State approved under Section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

(i) *Unemployment compensation* (UC) means cash benefits payable to individuals with respect to their unemployment.

(j) *UC information* and *State UC information* means information in the records of a State or State UC agency that pertains to the administration of the State UC law. This term includes those State wage reports collected under the IEVS (Section 1137 of the Social Security Act (SSA)) that are obtained by the State UC agency for determining UC monetary eligibility or are downloaded to the State UC agency's files as a result of a crossmatch but does not otherwise include those wage reports. It does not include information in a State's Directory of New Hires, but does include any such information that has been disclosed to the State UC agency for use in the UC program. It also does not include the per-

sonnel or fiscal information of a State UC agency.

(k) *Wage information* means information in the records of a State UC agency (and, for purposes of § 603.23 (IEVS)), information reported under provisions of State law which fulfill the requirements of Section 1137, SSA) about the—

(1) Wages paid to an individual,

(2) Social security account number (or numbers, if more than one) of such individual, and

(3) Name, address, State, and the Federal employer identification number of the employer who paid such wages to such individual.

[71 FR 56842, Sept. 27, 2006, as amended at 81 FR 56333, Aug. 19, 2016]

Subpart B—Confidentiality and Disclosure Requirements

§ 603.3 What is the purpose and scope of this subpart?

This subpart implements the basic confidentiality requirement derived from Section 303(a)(1), SSA, and the disclosure requirements of Sections 303(a)(7), (c)(1), (d), (e), (h), and (i), SSA, and Section 3304(a)(16), Federal Unemployment Tax Act (FUTA). This subpart also establishes uniform minimum requirements for the payment of costs, safeguards, and data-sharing agreements when UC information is disclosed, and for conformity and substantial compliance with this proposed rule. This subpart applies to States and State UC agencies, as defined in § 603.2(f) and (g), respectively.

§ 603.4 What is the confidentiality requirement of Federal UC law?

(a) *Statute.* Section 303(a)(1) of the SSA (42 U.S.C. 503(a)(1)) provides that, for the purposes of certification of payment of granted funds to a State under Section 302(a) (42 U.S.C. 502(a)), State law must include provision for such methods of administration as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) *Interpretation.* The Department of Labor interprets Section 303(a)(1), SSA, to mean that “methods of administration” that are reasonably calculated to

insure the full payment of UC when due must include provision for maintaining the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information, except as provided in this part.

(c) *Application.* Each State law must contain provisions that are interpreted and applied consistently with the interpretation in paragraph (b) of this section and with this subpart, and must provide penalties for any disclosure of confidential UC information that is inconsistent with any provision of this subpart.

§ 603.5 What are the exceptions to the confidentiality requirement?

The following are exceptions to the confidentiality requirement. Disclosure of confidential UC information is permissible under the exceptions in paragraphs (a) through (g) of this section only if authorized by State law and if such disclosure does not interfere with the efficient administration of the State UC law. Disclosure of confidential UC information is permissible under the exceptions in paragraphs (h) and (i) of this section without such restrictions.

(a) *Public domain information.* The confidentiality requirement of § 603.4 does not apply to public domain information, as defined at § 603.2(c).

(b) *UC appeals records.* Disclosure of appeals records and decisions, and precedential determinations on coverage of employers, employment, and wages, is permissible provided all social security account numbers have been removed and such disclosure is otherwise consistent with Federal and State law.

(c) *Individual or employer.* Disclosure for non-UC purposes, of confidential UC information about an individual to that individual, or of confidential UC information about an employer to that employer, is permissible.

(d) *Informed consent.* Disclosure of confidential UC information on the

basis of informed consent is permissible in the following circumstances—

(1) *Agent*—to one who acts for or in the place of an individual or an employer by the authority of that individual or employer if—

(i) In general—

(A) The agent presents a written release (which may include an electronically submitted release that the State determines is authentic) from the individual or employer being represented;

(B) When a written release is impossible or impracticable to obtain, the agent presents such other form of consent as is permitted by the State UC agency in accordance with State law;

(ii) In the case of an elected official performing constituent services, the official presents reasonable evidence (such as a letter from the individual or employer requesting assistance or a written record of a telephone request from the individual or employer) that the individual or employer has authorized such disclosure; or

(iii) In the case of an attorney retained for purposes related to the State's UC law, the attorney asserts that he or she is representing the individual or employer.

(2) *Third party (other than an agent) or disclosure made on an ongoing basis*—to a third party that is not acting as an agent or that receives confidential information following an informed consent disclosure on an ongoing basis (even if such entity is an agent), but only if that entity obtains a written release from the individual or employer to whom the information pertains.

(i) The release must be signed and must include a statement—

(A) Specifically identifying the information that is to be disclosed;

(B) That State government files will be accessed to obtain that information;

(C) Of the specific purpose or purposes for which the information is sought and a statement that information obtained under the release will only be used for that purpose or purposes; and

(D) Indicating all the parties who may receive the information disclosed.

(ii) The purpose specified in the release must be limited to—

(A) Providing a service or benefit to the individual signing the release that

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such individual expects to receive as a result of signing the release; or

(B) Carrying out administration or evaluation of a public program to which the release pertains.

NOTE TO PARAGRAPH (d): The Electronic Signatures in Global and National Commerce Act of 2000 (E-Sign), Pub. L. 106-229, may apply where a party wishes to effectuate electronically an informed consent release (§ 603.5(d)(2)) or a disclosure agreement (§ 603.10(a)) with an entity that uses informed consent releases. E-Sign, among other things, sets forth the circumstances under which electronic signatures, contracts, and other records relating to such transactions (in lieu of paper documents) are legally binding. Thus, an electronic communication may suffice under E-Sign to establish a legally binding contract. The States will need to consider E-Sign's application to these informed consent releases and disclosure agreements. In particular, a State must, to conform and substantially comply with this regulation, assure that these informed consent releases and disclosure agreements are legally enforceable. If an informed consent release or disclosure agreement is to be effectuated electronically, the State must determine whether E-Sign applies to that transaction, and, if so, make certain that the transaction satisfies the conditions imposed by E-Sign. The State must also make certain that the electronic transaction complies with every other condition necessary to make it legally enforceable.

(e) *Public official.* Disclosure of confidential UC information to a public official for use in the performance of his or her official duties is permissible.

(1) "Performance of official duties" means administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(2) For purposes of § 603.2(d)(2) through (5), "performance of official duties" includes, in addition to the activities set out in paragraph (e)(1) of this section, use of the confidential UC information for the following limited purposes:

(i) State and local performance accountability under WIOA sec. 116, including eligible training provider per-

formance accountability under WIOA secs. 116(d) and 122;

(ii) The requirements of discretionary Federal grants awarded under WIOA; or

(iii) As otherwise required for education or workforce training program performance accountability and reporting under Federal or State law.

(f) *Agent or contractor of public official.* Disclosure of confidential UC information to an agent or contractor of a public official to whom disclosure is permissible under paragraph (e) of this section.

(g) *Bureau of Labor Statistics.* The confidentiality requirement does not apply to information collected exclusively for statistical purposes under a cooperative agreement with the Bureau of Labor Statistics (BLS). Further, this part does not restrict or impose any condition on the transfer of any other information to the BLS under an agreement, or the BLS's disclosure or use of such information.

(h) *Court order; official with subpoena authority.* Disclosure of confidential UC information in response to a court order or to an official with subpoena authority is permissible as specified in § 603.7(b).

(i) *UC Program Oversight and Audits.* The confidentiality requirement does not apply to any disclosure to a Federal official for purposes of UC program oversight and audits, including disclosures under 20 CFR part 601 and 29 CFR parts 96 and 97.

[71 FR 56842, Sept. 27, 2006, as amended at 81 FR 56333, Aug. 19, 2016]

§ 603.6 What disclosures are required by this subpart?

(a) The confidentiality requirement of 303(a)(1), SSA, and § 603.4 are not applicable to this paragraph (a) and the Department of Labor interprets Section 303(a)(1), SSA, as requiring disclosure of all information necessary for the proper administration of the UC program. This includes disclosures to claimants, employers, the Internal Revenue Service (for purposes of UC tax administration), and the U.S. Citizenship and Immigration Services (for purposes of verifying a claimant's immigration status).

(b) In addition to Section 303(f), SSA (concerning an IEVS), which is addressed in subpart C, the following provisions of Federal UC law also specifically require disclosure of State UC information and State-held information pertaining to the Federal UC and benefit programs of Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemembers (UCX), Trade Adjustment Assistance (TAA) (except for confidential business information collected by States), Disaster Unemployment Assistance (DUA), and any Federal UC benefit extension program:

(1) Section 303(a)(7), SSA, requires State law to provide for making available, upon request, to any agency of the United States charged with the administration of public works or assistance through public employment, disclosure of the following information with respect to each recipient of UC—

- (i) Name;
- (ii) Address;
- (iii) Ordinary occupation;
- (iv) Employment status; and

(v) A statement of such recipient's rights to further compensation under the State law.

(2) Section 303(c)(1), SSA, requires each State to make its UC records available to the Railroad Retirement Board, and to furnish such copies of its UC records to the Railroad Retirement Board as the Board deems necessary for its purposes.

(3) Section 303(d)(1), SSA, requires each State UC agency, for purposes of determining an individual's eligibility benefits, or the amount of benefits, under a food stamp program established under the Food Stamp Act of 1977, to disclose, upon request, to officers and employees of the Department of Agriculture, and to officers or employees of any State food stamp agency, any of the following information contained in the records of the State UC agency—

- (i) Wage information,
- (ii) Whether an individual is receiving, has received, or has made application for, UC, and the amount of any such compensation being received, or to be received, by such individual,
- (iii) The current (or most recent) home address of such individual, and

(iv) Whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefore.

(4) Section 303(e)(1), SSA, requires each State UC agency to disclose, upon request, directly to officers or employees of any State or local child support enforcement agency, any wage information contained in the records of the State UC agency for purposes of establishing and collecting child support obligations (not to include custodial parent support obligations) from, and locating, individuals owing such obligations.

(5) Section 303(h), SSA, requires each State UC agency to disclose quarterly, to the Secretary of Health and Human Services (HHS), wage information and claim information as required under Section 453(i)(1) of the SSA (establishing the National Directory of New Hires), contained in the records of such agency, for purposes of Subsections (i)(1), (i)(3), and (j) of Section 453, SSA (establishing the National Directory of New Hires and its uses for purposes of child support enforcement, Temporary Assistance to Needy Families (TANF), TANF research, administration of the earned income tax credit, and use by the Social Security Administration).

(6) Section 303(i), SSA, requires each State UC agency to disclose, upon request, to officers or employees of the Department of Housing and Urban Development (HUD) and to representatives of a public housing agency, for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program of HUD, any of the following information contained in the records of such State agency about any individual applying for or participating in any housing assistance program administered by HUD who has signed a consent form approved by the Secretary of HUD—

- (i) Wage information, and
- (ii) Whether the individual is receiving, has received, or has made application for, UC, and the amount of any such compensation being received (or to be received) by such individual.

(7) Section 3304(a)(16), FUTA requires each State UC agency—

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(i) To disclose, upon request, to any State or political subdivision thereof administering a Temporary Assistance to Needy Families Agency (TANF) program funded under part A of Title IV of the SSA, wage information contained in the records of the State UC agency which is necessary (as determined by the Secretary of HHS in regulations) for purposes of determining an individual's eligibility for TANF assistance or the amount of TANF assistance; and

(ii) To furnish to the Secretary of HHS, in accordance with that Secretary's regulations at 45 CFR 303.108, wage information (as defined at 45 CFR 303.108(a)(2)) and UC information (as defined at 45 CFR 303.108(a)(3)) contained in the records of such agency for the purposes of the National Directory of New Hires established under Section 453(i) of the SSA.

(8) To comply with WIOA sec. 116(e)(4), States must, to the extent practicable, cooperate in the conduct of evaluations (including related research projects) provided for by the Secretary of Labor or the Secretary of Education under the provisions of Federal law identified in WIOA sec. 116(e)(1); WIOA secs. 169 and 242(c)(2)(D); sec. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 *et seq.*)); and the investigations provided for by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)). For purposes of this part, States must disclose confidential UC information to a Federal official (or an agent or contractor of a Federal official) requesting such information in the course of such evaluations. This disclosure must be done in accordance with appropriate privacy and confidentiality protections established in this part. This disclosure must be made to the "extent practicable", which means that the disclosure would not interfere with the efficient administration of the State UC law, as required by § 603.5.

(c) Each State law must contain provisions that are interpreted and applied consistently with the requirements listed in this section.

[71 FR 56842, Sept. 27, 2006, as amended at 81 FR 56333, Aug. 19, 2016]

§ 603.7 What requirements apply to subpoenas, other compulsory processes, and disclosure to officials with subpoena authority?

(a) *In general.* Except as provided in paragraph (b) of this section, when a subpoena or other compulsory process is served upon a State UC agency or the State, any official or employee thereof, or any recipient of confidential UC information, which requires the production of confidential UC information or appearance for testimony upon any matter concerning such information, the State or State UC agency or recipient must file and diligently pursue a motion to quash the subpoena or other compulsory process if other means of avoiding the disclosure of confidential UC information are not successful or if the court has not already ruled on the disclosure. Only if such motion is denied by the court or other forum may the requested confidential UC information be disclosed, and only upon such terms as the court or forum may order, such as that the recipient protect the disclosed information and pay the State's or State UC agency's costs of disclosure.

(b) *Exceptions.* The requirement of paragraph (a) of this section to move to quash subpoenas shall not be applicable, so that disclosure is permissible, where—

(1) *Court Decision*—a subpoena or other compulsory legal process has been served and a court has previously issued a binding precedential decision that requires disclosures of this type, or a well-established pattern of prior court decisions have required disclosures of this type, or

(2) *Official with subpoena authority*—Confidential UC information has been subpoenaed, by a local, State or Federal governmental official, other than a clerk of court on behalf of a litigant, with authority to obtain such information by subpoena under State or Federal law. The State or State UC agency may choose to disclose such confidential UC information to these officials without the actual issuance of a subpoena.

§ 603.8 What are the requirements for payment of costs and program income?

(a) *In general.* Except as provided in paragraph (b) of this section, grant funds must not be used to pay any of the costs of making any disclosure of UC information. Grant funds may not be used to pay any of the costs of making any disclosures under § 603.5(d)(2) (third party (other than an agent) or disclosure made on an ongoing basis), § 603.5(e) (optional disclosure to a public official), § 603.5(f) (optional disclosure to an agent or contractor of a public official), and § 603.5(g) (optional disclosure to BLS), § 603.6(b) (mandatory disclosures for non-UC purposes), or § 603.22 (mandatory disclosure for purposes of an IEVS).

(b) *Use of grant funds permitted.* Grant funds paid to a State under Section 302(a), SSA, may be used to pay the costs of only those disclosures necessary for proper administration of the UC program. (This may include some disclosures under § 603.5(a) (concerning public domain information), § 603.5(c) (to an individual or employer), and § 603.5(d)(1) (to an agent).) In addition, grant funds may be used to pay costs of disclosures under § 603.5(i) (for UC Program Oversight and Audits) and § 603.6(a) (for the proper administration of the UC program). Grant funds may also be used to pay costs associated with disclosures under § 603.7(b)(1) (concerning court-ordered compliance with subpoenas) if a court has denied recovery of costs, or to pay costs associated with disclosures under § 603.7(b)(2) (to officials with subpoena authority) if the State UC agency has attempted but not been successful in obtaining reimbursement of costs. Finally, grant funds may be used to pay costs associated with any disclosure of UC information if not more than an incidental amount of staff time and no more than nominal processing costs are involved in making the disclosure.

(c) *Calculation of costs.* The costs to a State or State UC agency of processing and handling a request for disclosure of information must be calculated in accordance with the cost principles and administrative requirements of 29 CFR part 97 and Office of Management and Budget Circular No. A-87 (Revised). For

the purpose of calculating such costs, any initial start-up costs incurred by the State UC agency in preparation for making the requested disclosure(s), such as computer reprogramming necessary to respond to the request, and the costs of implementing safeguards and agreements required by §§ 603.9 and 603.10, must be charged to and paid by the recipient. (Start-up costs do not include the costs to the State UC agency of obtaining, compiling, or maintaining information for its own purposes.) Postage or other delivery costs incurred in making any disclosure are part of the costs of making the disclosure. Penalty mail, as defined in 39 U.S.C. 3201(1), must not be used to transmit information being disclosed, except information disclosed for purposes of administration of State UC law. As provided in Sections 453(e)(2) and 453(g) of the SSA, the Secretary of HHS has the authority to determine what constitutes a reasonable amount for the reimbursement for disclosures under Section 303(h), SSA, and Section 3304(a)(16)(B), FUTA.

(d) *Payment of costs.* The costs to a State or State UC agency of making a disclosure of UC information, calculated in accordance with paragraph (c) of this section, must be paid by the recipient of the information or another source paying on behalf of the recipient, either in advance or by way of reimbursement. If the recipient is not a public official, such costs, except for good reason must be paid in advance. For the purposes of this paragraph (d), payment in advance means full payment of all costs before or at the time the disclosed information is given in hand or sent to the recipient. The requirement of payment of costs in this paragraph is met when a State UC agency has in place a reciprocal cost agreement or arrangement with the recipient. As used in this section, *reciprocal* means that the relative benefits received by each are approximately equal. Payment or reimbursement of costs must include any initial start-up costs associated with making the disclosure.

(e) *Program income.* Costs paid as required by this section, and any funds generated by the disclosure of UC information under this part, are program

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income and may be used only as permitted by 29 CFR 97.25(g) (on program income). Such income may not be used to benefit a State's general fund or other program.

§ 603.9 What safeguards and security requirements apply to disclosed information?

(a) *In general.* For disclosures of confidential UC information under § 603.5(d)(2) (to a third party (other than an agent) or disclosures made on an ongoing basis); § 603.5(e) (to a public official), except as provided in paragraph (d) of this section; § 603.5(f) (to an agent or contractor of a public official); § 603.6(b)(1) through (4), (6), and (7)(i) (as required by Federal UC law); and § 603.22 (to a requesting agency for purposes of an IEVS), a State or State UC agency must require the recipient to safeguard the information disclosed against unauthorized access or re-disclosure, as provided in paragraphs (b) and (c) of this section, and must subject the recipient to penalties provided by the State law for unauthorized disclosure of confidential UC information.

(b) *Safeguards to be required of recipients.* (1) The State or State UC agency must:

(i) Require the recipient to use the disclosed information only for purposes authorized by law and consistent with an agreement that meets the requirements of § 603.10;

(ii) Require the recipient to store the disclosed information in a place physically secure from access by unauthorized persons;

(iii) Require the recipient to store and process disclosed information maintained in electronic format, such as magnetic tapes or discs, in such a way that unauthorized persons cannot obtain the information by any means;

(iv) Require the recipient to undertake precautions to ensure that only authorized personnel are given access to disclosed information stored in computer systems;

(v) Require each recipient agency or entity to:

(A) Instruct all personnel having access to the disclosed information about confidentiality requirements, the requirements of this subpart B, and the

sanctions specified in the State law for unauthorized disclosure of information, and

(B) Sign an acknowledgment that all personnel having access to the disclosed information have been instructed in accordance with paragraph (b)(1)(v)(A) of this section and will adhere to the State's or State UC agency's confidentiality requirements and procedures which are consistent with this subpart B and the agreement required by § 603.10, and agreeing to report any infraction of these rules to the State UC agency fully and promptly,

(vi) Require the recipient to dispose of information disclosed or obtained, and any copies thereof made by the recipient agency, entity, or contractor, after the purpose for which the information is disclosed is served, except for disclosed information possessed by any court. Disposal means return of the information to the disclosing State or State UC agency or destruction of the information, as directed by the State or State UC agency. Disposal includes deletion of personal identifiers by the State or State UC agency in lieu of destruction. In any case, the information disclosed must not be retained with personal identifiers for longer than such period of time as the State or State UC agency deems appropriate on a case-by-case basis; and

(vii) Maintain a system sufficient to allow an audit of compliance with the requirements of this part.

(2) In the case of disclosures made under § 603.5(d)(2) (to a third party (other than an agent) or disclosures made on an ongoing basis), the State or State UC agency must also—

(i) Periodically audit a sample of transactions accessing information disclosed under that section to assure that the entity receiving disclosed information has on file a written release authorizing each access. The audit must ensure that the information is not being used for any unauthorized purpose;

(ii) Ensure that all employees of entities receiving access to information disclosed under § 603.5(d)(2) are subject to the same confidentiality requirements, and State criminal penalties for

violation of those requirements, as are employees of the State UC agency.

(c) *Redisclosure of confidential UC information.* (1) A State or State UC agency may authorize any recipient of confidential UC information under paragraph (a) of this section to redisclose information only as follows:

(i) To the individual or employer who is the subject of the information;

(ii) To an attorney or other duly authorized agent representing the individual or employer;

(iii) In any civil or criminal proceedings for or on behalf of a recipient agency or entity;

(iv) In response to a subpoena only as provided in § 603.7;

(v) To an agent or contractor of a public official only if the person redisclosing is a public official, if the redisclosure is authorized by the State law, and if the public official retains responsibility for the uses of the confidential UC information by the agent or contractor;

(vi) From one public official to another if the redisclosure is authorized by the State law;

(vii) When so authorized by Section 303(e)(5), SSA, (redisclosure of wage information by a State or local child support enforcement agency to an agent under contract with such agency for purposes of carrying out child support enforcement) and by State law; or

(viii) When specifically authorized by a written release that meets the requirements of § 603.5(d) (to a third party with informed consent).

(2) Information redisclosed under paragraphs (c)(1)(v) and (vi) of this section must be subject to the safeguards in paragraph (b) of this section.

(d) The requirements of this section do not apply to disclosures of UC information to a Federal agency which the Department has determined, by notice published in the FEDERAL REGISTER, to have in place safeguards adequate to satisfy the confidentiality requirement of Section 303(a)(1), SSA.

§ 603.10 What are the requirements for agreements?

(a) *Requirements.* (1) For disclosures of confidential UC information under § 603.5(d)(2) (to a third party (other than an agent) or disclosures made on

an ongoing basis); § 603.5(e) (to a public official), except as provided in paragraph (d) of this section; § 603.5(f) (to an agent or contractor of a public official); § 603.6(b)(1) through (4), (6), and (7)(i) (as required by Federal UC law); and § 603.22 (to a requesting agency for purposes of an IEVS), a State or State UC agency must enter into a written, enforceable agreement with any agency or entity requesting disclosure(s) of such information. The agreement must be terminable if the State or State UC agency determines that the safeguards in the agreement are not adhered to.

(2) For disclosures referred to in § 603.5(f) (to an agent or contractor of a public official), the State or State UC agency must enter into a written, enforceable agreement with the public official on whose behalf the agent or contractor will obtain information. The agreement must hold the public official responsible for ensuring that the agent or contractor complies with the safeguards of § 603.9. The agreement must be terminable if the State or State UC agency determines that the safeguards in the agreement are not adhered to.

(b) *Contents of agreement*—(1) *In general.* Any agreement required by paragraph (a) of this section must include, but need not be limited to, the following terms and conditions:

(i) A description of the specific information to be furnished and the purposes for which the information is sought;

(ii) A statement that those who request or receive information under the agreement will be limited to those with a need to access it for purposes listed in the agreement;

(iii) The methods and timing of requests for information and responses to those requests, including the format to be used;

(iv) Provision for paying the State or State UC agency for any costs of furnishing information, as required by § 603.8 (on costs);

(v) Provision for safeguarding the information disclosed, as required by § 603.9 (on safeguards); and

(vi) Provision for on-site inspections of the agency, entity, or contractor, to assure that the requirements of the

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State's law and the agreement or contract required by this section are being met.

(2) In the case of disclosures under § 603.5(d)(2) (to a third party (other than an agent) or disclosures made on an ongoing basis), the agreement required by paragraph (a) of this section must assure that the information will be accessed by only those entities with authorization under the individual's or employer's release, and that it may be used only for the specific purposes authorized in that release.

(c) *Breach of agreement*—(1) *In general.* If an agency, entity, or contractor, or any official, employee, or agent thereof, fails to comply with any provision of an agreement required by this section, including timely payment of the State's or State UC agency's costs billed to the agency, entity, or contractor, the agreement must be suspended, and further disclosure of information (including any disclosure being processed) to such agency, entity, or contractor is prohibited, until the State or State UC agency is satisfied that corrective action has been taken and there will be no further breach. In the absence of prompt and satisfactory corrective action, the agreement must be canceled, and the agency, entity, or contractor must be required to surrender to the State or State UC agency all confidential UC information (and copies thereof) obtained under the agreement which has not previously been returned to the State or State UC agency, and any other information relevant to the agreement.

(2) *Enforcement.* In addition to the actions required to be taken by paragraph (c)(1) of this section, the State or State UC agency must undertake any other action under the agreement, or under any law of the State or of the United States, to enforce the agreement and secure satisfactory corrective action or surrender of the information, and must take other remedial actions permitted under State or Federal law to effect adherence to the requirements of this subpart B, including seeking damages, penalties, and restitution as permitted under such law for any charges to granted funds and all costs incurred by the State or the State UC agency in pursuing the

breach of the agreement and enforcement as required by this paragraph (c).

(d) The requirements of this section do not apply to disclosures of UC information to a Federal agency which the Department has determined, by notice published in the FEDERAL REGISTER, to have in place safeguards adequate to satisfy the confidentiality requirement of Section 303(a)(1), SSA, and an appropriate method of paying or reimbursing the State UC agency (which may involve a reciprocal cost arrangement) for costs involved in such disclosures. These determinations will be published in the FEDERAL REGISTER.

§ 603.11 How do States notify claimants and employers about the uses of their information?

(a) *Claimants.* Every claimant for compensation must be notified, at the time of application, and periodically thereafter, that confidential UC information pertaining to the claimant may be requested and utilized for other governmental purposes, including, but not limited to, verification of eligibility under other government programs. Notice on or attached to subsequent additional claims will satisfy the requirement for periodic notice thereafter.

(b) *Employers.* Every employer subject to a State's law must be notified that wage information and other confidential UC information may be requested and utilized for other governmental purposes, including, but not limited to, verification of an individual's eligibility for other government programs.

§ 603.12 How are the requirements of this part enforced?

(a) *Resolving conformity and compliance issues.* For the purposes of resolving issues of conformity and substantial compliance with the requirements set forth in subparts B and C, the provisions of 20 CFR 601.5(b) (informal discussions with the Department of Labor to resolve conformity and substantial compliance issues), and 20 CFR 601.5(d) (Secretary of Labor's hearing and decision on conformity and substantial compliance) apply.

(b) *Conformity and substantial compliance.* Whenever the Secretary of Labor, after reasonable notice and opportunity for a hearing to the State UC

agency of a State, finds that the State law fails to conform, or that the State or State UC agency fails to comply substantially, with:

(1) The requirements of Title III, SSA, implemented in subparts B and C of this part, the Secretary of Labor shall notify the Governor of the State and such State UC agency that further payments for the administration of the State UC law will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the Department of Labor shall make no further payments to such State.

(2) The FUTA requirements implemented in this subpart B, the Secretary of Labor shall make no certification under that section to the Secretary of the Treasury for such State as of October 31 of the 12-month period for which such finding is made.

Subpart C—Mandatory Disclosure for Income and Eligibility Verification System (IEVS)

§ 603.20 What is the purpose and scope of this subpart?

(a) *Purpose.* Subpart C implements Section 303(f), SSA. Section 303(f) requires States to have in effect an income and eligibility verification system, which meets the requirements of Section 1137, SSA, under which information is requested and exchanged for the purpose of verifying eligibility for, and the amount of, benefits available under several federally assisted programs, including the Federal-State UC program.

(b) *Scope.* This subpart C applies only to a State UC agency.

NOTE TO PARAGRAPH (b): Although not implemented in this part 603, Section 1137(a)(1), SSA, provides that each State must require claimants for compensation to furnish to the State UC agency their social security account numbers, as a condition of eligibility for compensation, and further requires States to utilize such account numbers in the administration of the State UC laws. Section 1137(a)(3), SSA, further provides that employers must make quarterly wage reports to a State UC agency, or an alternative agency, for use in verifying eligibility for, and the amount of, benefits. Section 1137(d)(1), SSA, provides that each State

must require claimants for compensation, as a condition of eligibility, to declare in writing, under penalty of perjury, whether the individual is a citizen or national of the United States, and, if not, that the individual is in a satisfactory immigration status. Other provisions of Section 1137(d), SSA, not implemented in this regulation require the States to obtain, and individuals to furnish, information which shows immigration status, and require the States to verify immigration status with the Bureau of Citizenship and Immigration Services.

§ 603.21 What is a requesting agency?

For the purposes of this subpart C, *requesting agency* means:

(a) *Temporary Assistance to Needy Families Agency*—Any State or local agency charged with the responsibility of administering a program funded under part A of Title IV of the SSA.

(b) *Medicaid Agency*—Any State or local agency charged with the responsibility of administering the provisions of the Medicaid program under a State plan approved under Title XIX of the SSA.

(c) *Food Stamp Agency*—Any State or local agency charged with the responsibility of administering the provisions of the Food Stamp Program under the Food Stamp Act of 1977.

(d) *Other SSA Programs Agency*—Any State or local agency charged with the responsibility of administering a program under a State plan approved under Title I, X, XIV, or XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the SSA.

(e) *Child Support Enforcement Agency*—Any State or local child support enforcement agency charged with the responsibility of enforcing child support obligations under a plan approved under part D of Title IV of the SSA.

(f) *Social Security Administration*—Commissioner of the Social Security Administration in establishing or verifying eligibility or benefit amounts under Titles II (Old-Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the SSA.

§ 603.22 What information must State UC agencies disclose for purposes of an IEVS?

(a) *Disclosure of information.* Each State UC agency must disclose, upon request, to any requesting agency, as

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defined in § 603.21, that has entered into an agreement required by § 603.10, wage information (as defined at § 603.2(k)) and claim information (as defined at § 603.2(a)) contained in the records of such State UC agency.

(b) *Format.* The State UC agency must adhere to standardized formats established by the Secretary of HHS (in consultation with the Secretary of Agriculture) and set forth in 42 CFR 435.960 (concerning standardized formats for furnishing and obtaining information to verify income and eligibility).

§ 603.23 What information must State UC agencies obtain from other agencies, and crossmatch with wage information, for purposes of an IEVS?

(a) *Crossmatch with information from requesting agencies.* Each State UC agency must obtain such information from the Social Security Administration and any requesting agency as may be needed in verifying eligibility for, and the amount of, compensation payable under the State UC law.

(b) *Crossmatch of wage and benefit information.* The State UC agency must crossmatch quarterly wage information with UC payment information to the extent that such information is likely, as determined by the Secretary of Labor, to be productive in identifying ineligibility for benefits and preventing or discovering incorrect payments.

PART 604—REGULATIONS FOR ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION

Sec.

604.1 Purpose and scope.

604.2 Definitions.

604.3 Able and available requirement—general principles.

604.4 Application—ability to work.

604.5 Application—availability for work.

604.6 Conformity and substantial compliance.

AUTHORITY: 42 U.S.C. 1302(a); 42 U.S.C. 503(a)(2) and (5); 26 U.S.C. 3304(a)(1) and (4); 26 U.S.C. 3306(h); 42 U.S.C. 1320b-7(d); Secretary's Order No. 4-75 (40 FR 18515); and Secretary's Order No. 14-75 (November 12, 1975).

SOURCE: 72 FR 1893, Jan. 16, 2007, unless otherwise noted.

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§ 604.1 Purpose and scope.

The purpose of this Part is to implement the requirements of Federal UC law that limit a State's payment of UC to individuals who are able to work and available for work. This regulation applies to all State UC laws and programs.

§ 604.2 Definitions.

(a) *Department* means the United States Department of Labor.

(b) *FUTA* means the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*

(c) *Social Security Act* means the Social Security Act, 42 U.S.C. 501 *et seq.*

(d) *State* means a State of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(e) *State UC agency* means the agency of the State charged with the administration of the State's UC law.

(f) *State UC law* means the law of a State approved under Section 3304(a), FUTA (26 U.S.C. 3304(a)).

(g) *Unemployment Compensation (UC)* means cash benefits payable to individuals with respect to their unemployment.

(h) *Week of unemployment* means a week of total, part-total or partial unemployment as defined in the State's UC law.

§ 604.3 Able and available requirement—general principles.

(a) A State may pay UC only to an individual who is able to work and available for work for the week for which UC is claimed.

(b) Whether an individual is able to work and available for work under paragraph (a) of this section must be tested by determining whether the individual is offering services for which a labor market exists. This requirement does not mean that job vacancies must exist, only that, at a minimum, the type of services the individual is able and available to perform is generally performed in the labor market. The State must determine the geographical scope of the labor market for an individual under its UC law.

(c) The requirement that an individual be able to work and available for