

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 604**

RIN 1205-AB41

**Unemployment Compensation—
Eligibility****AGENCY:** Employment and Training Administration, Labor.**ACTION:** Final rule.

SUMMARY: The Department of Labor (Department) is issuing this Final Rule to implement the requirements of the Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA) that limit a State's payment of unemployment compensation (UC) only to individuals who are able and available (A&A) for work. This rule applies to all State UC laws and programs.

DATES: *Effective Date:* This Final Rule is effective February 15, 2007.

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SUPPLEMENTARY INFORMATION:**I. Background**

On July 22, 2005, the Department published a Notice of Proposed Rulemaking (NPRM) concerning the A&A requirement at 70 FR 42474. The Department invited comments through September 20, 2005.

II. General Discussion of the Final Rule

The Department and its predecessors (the Social Security Board and the Federal Security Agency) have consistently interpreted provisions of Federal UC law, contained in the SSA and the FUTA, to require that States, as a condition of participation in the Federal-State UC program, limit the payment of UC to individuals who are A&A. As explained in the NPRM, the UC program is designed to provide temporary wage insurance for individuals who are unemployed due to a lack of suitable work. The Federal A&A rules implement this design by testing whether the fact that an individual did not work for any week was involuntary due to the unavailability of suitable work. Although this interpretation is

longstanding, it has never been comprehensively addressed in a rule in the Code of Federal Regulations (CFR).

The A&A requirement is implicit in the structure and purpose of the SSA and the FUTA, and Congress has repeatedly adopted, acquiesced in, and relied on the Department's interpretation that Federal UC law includes an A&A requirement. Nevertheless, because the A&A requirement is not explicitly stated in Federal law or the CFR, some confusion exists regarding the validity of the A&A requirement as well as its scope and application.

This confusion became especially clear in rulemakings that created and then removed the Birth and Adoption UC (BAA-UC) regulation, which permitted States to pay UC to new parents who stopped work following the birth or adoption of a child. *See* 65 FR 37210 (June 13, 2000) for the BAA-UC Final Rule, and 68 FR 58540 (Oct. 9, 2003) for the final rule removing the BAA-UC rule. In both rulemakings, commenters argued that there are no specific A&A requirements set out in Federal law and that Congress expressly rejected A&A requirements. In the course of these rulemakings, it also became clear that misconceptions existed about the application and scope of the Federal A&A requirement. For example, misconceptions existed about why the Department permitted individuals to be treated as A&A in certain situations. The Department discussed these situations in detail at 68 FR 58540, 58543-58545 (Oct. 9, 2003). As another example, some commenters viewed an active work search as a necessary component of the A&A requirement. However, this is not the Department's position.

As a result of this confusion, the Department issued an NPRM clearly setting forth its interpretation of the A&A requirement and is now issuing this Final Rule. This Final Rule does not regulate other areas of the UC program, such as monetary entitlement or disqualifications for such actions as voluntarily quitting employment. This Final Rule also does not address Federal labor laws (such as minimum wage or overtime laws) or disability nondiscrimination laws (such as the Section 504 of the Rehabilitation Act of 1973), which might affect the administration of the A&A requirement.

III. Summary of the Comments and Regulatory Changes*Comments Received on the Proposed Rule*

The Department received 25 pieces of correspondence commenting on the NPRM by the close of the comment period. Thirteen comments were from State UC agencies. Five comments were from business or employer interest groups, and seven comments were from worker advocacy groups. The Department considered all timely comments and included them in the rulemaking record. One late comment was not considered.

These comments are discussed below in the Discussion of Comments. Also discussed below are all substantive changes made to the rule that stem from the comments received. Non-substantive changes are not discussed.

Discussion of Comments

Need for Rule. Several commenters supported the rule. One of these supporters noted that "Although the 'A&A' test has always been a Federal requirement, the absence of any clear, readily available and legally binding statement articulating this policy has encouraged many inappropriate" legislative proposals. Another supporter stated that "In recent years, we have seen legislation introduced in a number of States, which we believe to be in violation of the longstanding interpretation of the eligibility rules under FUTA. This proposed rule will greatly clarify the situation for the States * * *."

Conversely, several commenters stated that the rule was either not necessary, or that the Department failed to specify any controversy or confusion over the validity of the A&A requirement, aside from issues related to the BAA-UC regulation. Nonetheless, one of these commenters did acknowledge that there is a "difference of opinion between the Department and some commentators" concerning the existence and nature of the A&A requirement.

The Department believes that the commenters' divergence of opinion on this matter serve to reinforce its view that rulemaking is necessary to put any doubt about its position to rest and to avoid controversies regarding the existence and nature of a Federal A&A requirement.

Individuals with Disabilities. Several commenters suggested the rule address the making of a "reasonable accommodation" under the Americans with Disabilities Act for individuals with disabilities. The principal reason

the Department undertook the creation of the rule was to eliminate confusion about the existence and nature of the A&A requirement in Federal UC law. This limited purpose was noted in the NPRM at 70 FR 42474: "This rule also does not address federal labor laws * * * or disability nondiscrimination laws * * *". In addition, the Department's regulations at 29 CFR part 32 already place obligations on States regarding nondiscrimination on the basis of disability. Determining whether an individual with a disability is A&A under the rule is a case-by-case determination. The Department believes that program letters rather than a regulation are better vehicles for applying general nondiscrimination obligations to case-by-case State determinations on whether an individual with a disability is A&A. Therefore, no change is made to the rule as a result of these comments.

Minimum Requirement and State Flexibility. Several commenters viewed the rule as restricting State flexibility in ways that would adversely affect eligibility. For example, one commenter stated that, "As currently written, the standards actively restrict or discourage States from taking steps to make the UI system accessible to the changing workforce, including individuals who are domestic violence survivors, who must seek work on a part-time basis * * *". This commenter went on to state "that the proposed regulations * * * may serve to restrict UI coverage and deal a serious blow to State laws currently in effect that have expanded coverage to previously underserved categories of workers." Conversely, one commenter suggested that the rule be clarified to more clearly state that it creates only minimum requirements.

Although the Department agrees that States should retain wide latitude in crafting their UC laws, it also believes that State laws must assure that an individual's unemployment for any week is involuntary due to the unavailability of suitable work. This requirement protects the integrity of the UC program and the State's unemployment fund. The Department believes that the rule provides States with considerable flexibility because it merely provides that States must require an individual to meet a minimum test of A&A.

More specifically, nothing in the rule requires that a State apply a single A&A test to all individuals. As a result, States continue to have the flexibility to apply a more liberal A&A test to victims of domestic violence than to other individuals. All that is required is that

the individual meet the rule's minimum A&A test.

Concerning part-time work, the proposed rule established a very broad test of availability: an individual may be considered available if the "individual is available for any work for all *or a portion* of the week claimed," as long as the individual is not withdrawing from the labor market. 70 FR 42474, 42481 (emphasis added); § 604.5(a)(1). Similar language exists for the "able" requirement. See 70 FR 42474, 42481; § 604.4(a). The language referring to "a portion of the week" recognizes that an individual may be eligible if "A&A" only for part-time work. Accordingly, the Department has not changed the proposed rule as a result of these comments regarding State flexibility.

Concerning the comment that the rule should more clearly state that it creates only a minimum requirement, the Department believes the proposed rule was clear in its statement that it "does not limit the States' ability to impose additional able and available requirements that are consistent with applicable Federal laws." 70 FR 42474, 42481; § 604.3(c). Accordingly, the Department has not changed the proposed rule as a result of this comment.

Work Search. Several commenters stated that conducting an active search for work is a necessary component of availability and should be addressed in future rulemakings. The Department agrees that, as a policy matter, States should require an active search for work, but does not agree that the suggested rulemaking is appropriate. The Department's contemporaneous interpretation of the original SSA in 1935 was that Federal law does not require a work search for the regular UC program.

Thereafter, in the early 1980's, Congress examined the issue of work search in the UC program. This examination did not result in a search for work requirement for the regular UC program. Instead, it resulted in the creation of a "sustained and systematic" search for work requirement only for the Federal-State extended benefits program. Pub. L. 96-499, § 1024(a) (1980) (amending the Federal-State Extended Unemployment Compensation Act of 1970 § 202(a)(3), tit. II at § 202(a)(3)(E)). Therefore, the Department believes that Congress is well aware of the Department's longstanding interpretation that there is no Federal work search requirement and has not chosen to add a work search requirement. Any work search requirement would need to be legislated by Congress.

Labor Market Attachment. Several commenters objected to the requirement that A&A be tested in terms of whether the individual has withdrawn from the labor market as discussed in §§ 604.4(a) and 604.5(a)(1)-(2). Specifically, these commenters averred that this "withdrawal" test imposed a new and more rigid standard for A&A and suitable work cases than had previously existed. Commenters also expressed concerns that application of the "withdrawal" test would result in States denying UC to an individual even though no "suitable" work is available in the labor market, which would be inconsistent with one of the Department's stated rationales for this rulemaking in that UC should be paid for a lack of "suitable" work.

The Department does not believe that this test is new, rigid, or would require a denial of UC where no "suitable" work is available. Several commenters claiming the test was new stated that it was a departure from a Departmental issuance from 1962. However, as noted in the preamble to the proposed rule, that issuance actually provided for the labor market test described in the proposed rule:

"The availability requirement means that the claimant must be available for suitable work which is ordinarily performed in his chosen locality in sufficient amount to constitute a substantial labor market for his services. A claimant does not satisfy the requirement by being available for an insignificant amount of work. Ordinarily, for example, a concert pianist in a rural area who limits his availability to concert work in that area is not available for enough suitable work to meet the requirement."

70 FR 42474, 42476 (July 22, 2005) (quoting U.S. Department of Labor, Bureau of Employment Security, Unemployment Insurance Legislative Policy—Recommendations for State Legislation 1962 (October 1962)).

The Department believes the "withdrawal" test balances the need to assure genuine attachment by the individual to the labor market—which is what the A&A requirement is testing—with the need to recognize that, due to labor market fluctuations, work in the individual's usual and customary occupation may not be available at any given time. In fact, contrary to the commenters' assertions, the "withdrawal" test provides the States with greater flexibility as it permits States to pay UC to individuals who have A&A restrictions, such as limiting availability to part-time work, as long as the restrictions do not amount to a withdrawal from the labor market. Without this "withdrawal" test, individuals with *any* restrictions would

be denied and the regulation would be rigid, as the commenters assert.

The proposed and final rule at § 604.3(b) emphasizes the minimal nature of the “withdrawal” test by stating that:

Whether an individual is able to work and available for work * * * will be tested by determining whether the individual is offering services for which a labor market exists. This 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.

Under this test, if the services offered by an individual are restricted to the point that the services are not generally performed in the labor market (that is, the individual has withdrawn from the labor market), then the individual is unemployed as a result of those restrictions and is not eligible for UC. Those restrictions on services could be for any number of reasons, such as hours of availability, the distance the individual is willing to commute, or what types of jobs the individual is willing or able to accept. Holding an individual unavailable due to such restrictions is neither novel nor inconsistent with the notion that UC is for individuals who are involuntarily unemployed due to lack of suitable work. At the same time, as noted, the “withdrawal” test provides flexibility as it permits payment of benefits to individuals who place some restrictions on their availability, but who have not withdrawn from the labor market.

The Department also notes that the rule does not require a denial of UC simply because no “suitable” work was available at a particular time. As noted, the rule balances the need to assure genuine attachment to the labor force with labor market conditions that cause a lack of work in the individual’s usual and customary occupation. Thus, on the one hand, jobs of the type that the individual is making him or herself available for must be performed in the labor market, even if no new job openings currently exist. On the other hand, if the individual restricts his or her availability to jobs for which there is no labor market, the individual is not available.

The proposed and final rule at § 604.5(a)(2) affords further flexibility by providing that what is “suitable” is determined under State law. This provision allows the State to take into consideration the education and training of the individual, among other factors.

What a State law may not do, however, is to define “suitable” work in such a way that it permits the

individual to limit his or her availability in a way that constitutes a withdrawal from the labor market. To emphasize this point, § 604.5(a)(2) of the proposed rule has been changed from “The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided such limitation does not constitute a withdrawal from the labor market” to “The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided the State law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market.”

Availability and Illness. A State comment addressed the proposed rule’s provision at § 604.4(b), which permits an individual to be considered “able” to work if the “individual has previously demonstrated his or her ability to work and availability for work following the most recent separation from employment,” unless the individual has refused an offer of suitable work due to such illness or injury. This commenter noted the lack of a parallel provision in the “available for work” section of the rule and questioned whether this meant the individual, although considered “able to work,” must be denied for not being available for work. The Department did not intend this individual to be denied for not being available for work. As a result of this comment, § 604.5(g) of the Final Rule allows a State to find an individual available for work if it finds that the individual is able to work under § 604.4(b), despite the individual’s illness or injury. Further, as a result of this change, § 604.5(g) of the proposed rule was re-designated to § 604.5(h) in this Final Rule.

Aliens. Section 604.5(f) of the proposed rule provided that to be considered available for work for a week (and thus potentially eligible for UC for that week), an “alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government.” Several commenters requested that specific situations involving alien eligibility be addressed in the Final Rule, notably regarding aliens with H-1B visas. Since legislation and Federal regulations governing alien status and work authorization frequently change, the Department believes it unwise to specify in Part 604 which classes of aliens have work authorization and may therefore be found legally available for work. Rather, the Department will issue program letters relaying information on

alien work authorization from the United States Citizenship and Immigration Service. Accordingly, no change is made to the rule as a result of this comment. The Department did delete unnecessary language, however.

Finally, the Department put a number of the provisions of the regulatory text into the active voice and substituted “must” for “shall” in several places. These changes are purely stylistic; the Department intends no substantive change in meaning of the amended provisions.

IV. Administrative Information

Executive Order 12866

The Department has determined that this Final Rule is a “significant regulatory action” within the meaning of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order at section 3(f)(4). Accordingly, the Final Rule has been submitted to, and reviewed by, the Office of Management and Budget (OMB).

However, the Department has determined that this Final Rule is not “economically significant” because it does not have an annual effect on the economy of \$100 million or more. The Department has also determined that the Final Rule has no adverse material impact upon the economy and that it does not materially alter the budgeting impact of entitlements, grants, user fees or loan programs, or the rights and obligations of recipients. This Final Rule implements the A&A requirements of the program consistent with the authorizing legislation and serves to codify longstanding program interpretations.

Further, the Department has evaluated the rule and found it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. Although it impacts States and State UC agencies, it does not adversely affect them in a material way. The rule limits a State’s payment of UC only to individuals who are A&A for work, and all State laws currently contain A&A requirements.

Executive Order 13132

The Department reviewed this rule in accordance with Executive Order 13132, and determined that the rule may have Federalism implications. To this end, organizations representing State elected officials were contacted. These organizations expressed no concerns. About one-half of the comments received were from individual State

agencies. The Department believes this Final Rule adequately addresses the concerns expressed in those comments.

Executive Order 12988

The Department drafted and reviewed this regulation according to Executive Order 12988 on Civil Justice Reform, and it does not unduly burden the Federal court system. The Department drafted the rule to minimize litigation and provide a clear legal standard for affected conduct. The Department has reviewed this Final Rule carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

The Department reviewed this rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. The Department has determined that this Final Rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement.

Paperwork Reduction Act

This regulatory action contains no information collection requirements.

Regulatory Flexibility Act/SBREFA

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required when the rule “will not * * * have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(5). Therefore, the definition of the term “small entity” does not include States, State UC agencies, or individuals.

This Final Rule codifies a longstanding interpretation for determining eligibility for unemployed individuals. This Final Rule, therefore, governs an entitlement program administered by the States and not by small governmental jurisdictions. In addition, the entitlement program offers benefits to unemployed individuals and does not directly affect the small entities as defined by the RFA. Therefore, the

Department certifies that this Final Rule will not have a significant impact on a substantial number of small entities and, as a result, no regulatory flexibility analysis is required.

In addition, the Department certifies that this Final Rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). Under section 804 of SBREFA, a major rule is one that is an “economically significant regulatory action” within the meaning of Executive Order 12866. The Department certifies that, because this Final Rule is not an economically significant rule under Executive Order 12866, it also is not a major rule under SBREFA.

Effect on Family Life

The Department certifies that this rule was assessed in accordance with Pub. L. 105–277, 112 Stat. 2681, and that the rule does not adversely affect the well-being of the nation’s families.

List of Subjects in 20 CFR Part 604

Employment and Training Administration, Labor, and Unemployment Compensation.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at 17.225, Unemployment Insurance.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

■ For the reasons set forth in this preamble, Chapter V of Title 20, Code of Federal Regulations, is amended by adding a new Part 604 to read as follows:

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).

§ 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 work applies only to the week of unemployment for which UC is claimed. It does not apply to the reasons for the individual’s separation from employment, although the separation may indicate the individual was not able to work or available for work during the week the separation occurred. This Part does not address the authority of States to impose disqualifications with respect to separations. This Part does not limit the States’ ability to impose additional able

and available requirements that are consistent with applicable Federal laws.

§ 604.4 Application—ability to work.

(a) A State may consider an individual to be able to work during the week of unemployment claimed if the individual is able to work for all or a portion of the week claimed, provided any limitation on his or her ability to work does not constitute a withdrawal from the labor market.

(b) If an individual has previously demonstrated his or her ability to work and availability for work following the most recent separation from employment, the State may consider the individual able to work during the week of unemployment claimed despite the individual's illness or injury, unless the individual has refused an offer of suitable work due to such illness or injury.

§ 604.5 Application—availability for work.

(a) *General application.* A State may consider an individual to be available for work during the week of unemployment claimed under any of the following circumstances:

(1) The individual is available for any work for all or a portion of the week claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market.

(2) The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided the State law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market. In determining whether the work is suitable, States may, among other factors, take into consideration the education and training of the individual, the commuting distance from the individual's home to the job, the previous work history of the individual (including salary and fringe benefits), and how long the individual has been unemployed.

(3) The individual is on temporary lay-off and is available to work only for the employer that has temporarily laid-off the individual.

(b) *Jury service.* If an individual has previously demonstrated his or her availability for work following the most recent separation from employment and is appearing for duty before any court under a lawfully issued summons during the week of unemployment claimed, a State may consider the individual to be available for work. For such an individual, attendance at jury duty may be taken as evidence of

continued availability for work. However, if the individual does not appear as required by the summons, the State must determine if the reason for non-attendance indicates that the individual is not able to work or is not available for work.

(c) *Approved training.* A State must not deny UC to an individual for failure to be available for work during a week if, during such week, the individual is in training with the approval of the State agency. However, if the individual fails to attend or otherwise participate in such training, the State must determine if the reason for non-attendance or non-participation indicates that the individual is not able to work or is not available for work.

(d) *Self-Employment Assistance.* A State must not deny UC to an individual for failure to be available for work during a week if, during such week, the individual is participating in a self-employment assistance program and meets all the eligibility requirements of such self-employment assistance program.

(e) *Short-time compensation.* A State must not deny UC to an individual participating in a short-time compensation (also known as worksharing) program under State UC law for failure to be available for work during a week, but such individual will be required to be available for his or her normal workweek.

(f) *Alien status.* To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien's status.

(g) *Relation to ability to work requirement.* A State may consider an individual available for work if the State finds the individual able to work under § 604.4(b) despite illness or injury.

(h) *Work search.* The requirement that an individual be available for work does not require an active work search on the part of the individual. States may, however, require an individual to be actively seeking work to be considered available for work, or States may impose a separate requirement that the individual must actively seek work.

§ 604.6 Conformity and substantial compliance.

(a) *In general.* A State's UC law must conform with, and the administration of

its law must substantially comply with, the requirements of this regulation for purposes of certification under:

(1) Section 3304(c) of the FUTA (26 U.S.C. 3304(c)), with respect to whether employers are eligible to receive credit against the Federal unemployment tax established by section 3301 of the FUTA (26 U.S.C. 3301), and

(2) Section 302 of the SSA (42 U.S.C. 502), with respect to whether a State is eligible to receive Federal grants for the administration of its UC program.

(b) *Resolving Issues of Conformity and Substantial Compliance.* For the purposes of resolving issues of conformity and substantial compliance with the requirements of this regulation, the following provisions of 20 CFR 601.5 apply:

(1) Paragraph (b) of this section, pertaining to informal discussions with the Department of Labor to resolve conformity and substantial compliance issues, and

(2) Paragraph (d) of this section, pertaining to the Secretary of Labor's hearing and decision on conformity and substantial compliance.

(c) *Result of Failure to Conform or Substantially Comply.*

(1) *FUTA Requirements.* Whenever the Secretary of Labor, after reasonable notice and opportunity for a hearing to the State UC agency, finds that the State UC law fails to conform, or that the State or State UC agency fails to comply substantially, with the requirements of the FUTA, as implemented in this regulation, then the Secretary of Labor shall make no certification under such act to the Secretary of the Treasury for such State as of October 31 of the 12-month period for which such finding is made. Further, the Secretary of Labor must 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.

(2) *SSA Requirements.* Whenever the Secretary of Labor, after reasonable notice and opportunity for a hearing to the State UC agency, finds that the State UC law fails to conform, or that the State or State UC agency fails to comply substantially, with the requirements of title III, SSA (42 U.S.C. 501-504), as implemented in this regulation, then the Secretary of Labor must 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 will not make further payments to such State.

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