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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 14-20

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH /s/
Assistant Secretary

SUBJECT: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 –
Summary of Key Unemployment Insurance (UI) Provisions and Guidance
Regarding Temporary Emergency State Staffing Flexibility

1. **Purpose.** To provide states with a summary of the UI provisions in Title II, Subtitle A of the CARES Act of 2020, Public Law (Pub. L.) 116-136 and to provide states with guidance regarding the emergency state staffing flexibility provisions.
2. **Action Requested.** The Department of Labor’s (Department) Employment and Training Administration requests State Workforce Administrators provide the information contained in this Unemployment Insurance Program Letter (UIPL) to appropriate program and other staff in state workforce systems as they implement the UI-related provisions that respond to the economic effects of the Coronavirus Disease 2019 (COVID-19).
3. **Summary and Background.**
 - a. Summary – On March 27, 2020, the U.S. President signed into law the CARES Act. This legislation provides emergency assistance and health care response for certain individuals, families, and businesses affected by the COVID-19 pandemic. The CARES Act includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A.
 - b. Background – The Department addressed permissible flexibility for states under existing federal law in response to the COVID-19 pandemic with the publication of UIPL No. 10-20, *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*, issued on March 12, 2020.

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The President also signed the Families First Coronavirus Response Act (Pub. L. 116-127) on March 18, 2020, which includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) set out in Division D. EUISAA provides: 1) emergency administrative grants to states; 2) emergency flexibilities to states related to temporarily modifying certain aspects of their UC laws; 3) a short-term waiver of Title XII (42 U.S.C. §1321 et al.) interest payments due and interest accrual on Title XII advances to states; and 4) full federal funding, under certain circumstances, of extended benefits (EB) paid through December 31, 2020. The Department provided guidance for implementation of these new provisions in UIPL No. 13-20, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020*, issued on March 22, 2020. EUISAA also requires the Department to provide technical assistance and guidance to assist states in establishing, implementing, and improving employer awareness of the Short-Time Compensation (STC) program, also known as Shared Work or Work Share.

The UI program is facing an unprecedented demand due to the economic effects of COVID-19. The CARES Act builds upon actions previously taken by the Department, Congress, and the President, by including, among other things, provisions for temporary coverage of individuals who have exhausted their entitlement to regular UC and individuals who are not eligible for regular UC, such as individuals who are self-employed or have limited recent work history. It also provides individuals who are collecting certain benefits with an additional \$600 in Federal benefits per week for weeks of unemployment ending on or before July 31, 2020.

This UIPL includes a summary of the UI-related provisions in Title II, Subtitle A of the CARES Act and provides guidance to states for implementing the temporary emergency state staffing flexibility provision. Additional and more detailed instruction for implementing the CARES Act will be provided in forthcoming guidance.

Importance of Program Integrity. The programs and provisions in the CARES Act operate in tandem with the fundamental eligibility requirements of the Federal-State UI program, which remain in place. In addition, some of the programs include new eligibility requirements. These requirements include that individuals are only entitled to benefits if they are no longer working through no fault of their own and that individuals must be able and available to work.

While the Act does provide workers some flexibilities, quitting work without good cause to obtain additional benefits would be fraud. Sections 2104(f) and 2107(e) expressly provide that if an individual has obtained the benefit through fraud, the individual is ineligible for any additional benefit payments, must pay back the benefits, and is subject to prosecution under 18 USC §1001.

States play a fundamental role in ensuring the integrity of the UI program. While states have been provided some flexibilities as a result of COVID-19, those

flexibilities are generally limited to dealing with the effects of COVID-19, as discussed in UIPL Nos. 10-20 and 13-20. States must ensure that individuals only receive benefits in accordance with these statutory provisions.

The Department is actively working with states receiving funding under the Act to provide unemployment insurance benefits only to those who are entitled to such benefits. The Department is also actively engaging with the Office of the Inspector General (OIG) to ensure program integrity. The Act includes an appropriation of \$26 million to the Office of the Inspector General of the Department of Labor (Section 2115) to carry out audits, investigations, and other oversight activities related to states' adherence to existing UI laws and policies, as well as the provisions described above.

4. Details

a. **Summary of Provisions.** The CARES Act authorizes the following provisions.

- i. *Pandemic Unemployment Assistance (PUA)* (Section 2102). This program provides up to 39 weeks of benefits and is available starting with weeks of unemployment beginning on or after January 27, 2020 and ending on or before December 31, 2020.

This program covers individuals who are self-employed, seeking part-time employment, or whom otherwise would not qualify for regular UC or EB under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC) under section 2107. Coverage also includes individuals who have exhausted all rights to regular UC or EB under state or federal law, or PEUC.

Operationally, this program will be administered similar to the Disaster Unemployment Assistance (DUA) program. This program is available in the United States, American Samoa, Commonwealth of the Northern Mariana Islands, the District of Columbia, Federated States of Micronesia, Guam, Marshall Islands, Puerto Rico, the Republic of Palau, and the U.S. Virgin Islands, provided the state/territory signs an agreement with the Department.

Individuals must demonstrate that they are otherwise able to work and available for work within the meaning of applicable state law, except that they are unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 related reasons specified in section 2102(a)(3)(A)(ii)(I) of the CARES Act.

- ii. *Emergency unemployment relief for governmental entities and non-profit organizations* (Section 2103). The Department is authorized to issue guidance to allow states to interpret their state UC laws in a manner that would provide

maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest.

This section of the CARES Act also provides for transfers to a state's account in the unemployment trust fund from the Federal Unemployment Account to provide partial reimbursements (generally 50 percent of the amount of payments in lieu of contributions) to state and local governmental entities, certain nonprofit organizations, and federally recognized Indian tribes for weeks of unemployment between March 13, 2020 and December 31, 2020. These partial reimbursements apply to all payments made during this time period, even if the unemployed individual is not unemployed as a result of COVID-19.

- iii. *Emergency increase in unemployment compensation benefits, called Federal Pandemic Unemployment Compensation (FPUC)* (Section 2104). This program provides an additional \$600 per week to individuals who are collecting regular UC (including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX)), PEUC, PUA, EB, STC, Trade Readjustment Allowances (TRA), Disaster Unemployment Assistance (DUA), and payments under the Self Employment Assistance (SEA) program. This is available for weeks of unemployment beginning after the date on which the state enters into an agreement with the Department and ending with weeks of unemployment ending on or before July 31, 2020.

This program is available in the United States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, provided the state/territory signs an agreement with the Department.

Among the requirements of this program is a non-reduction rule, which prohibits states from changing the computation method governing regular UC law in a way that results in the reduction of average weekly benefit amounts or the number of weeks of benefits payable (*i.e.*, maximum benefit entitlement).

- iv. *Temporary full federal funding of the first week of compensable regular unemployment for states with no waiting week* (Section 2105). States that provide compensation to individuals for their first week of unemployment (*i.e.*, states which do not require a waiting week) and that enter into an agreement with the Department will receive 100 percent federal funding for the total amount of regular UC paid to individuals for their first week of regular UC. This funding is available for weeks of unemployment beginning after the date on which the state enters into an agreement with the Department and ends with weeks of unemployment ending on or before December 31, 2020.
- v. *Emergency state staffing flexibility* (Section 2106). States are provided with limited emergency flexibility regarding the suspension of the requirement to use

personnel standards on a merit basis through December 31, 2020. This provision is discussed in more detail in subsection D below.

- vi. *Pandemic Emergency Unemployment Compensation (PEUC)* (Section 2107). This program provides up to 13 weeks of benefits and is available for weeks of unemployment beginning after the date on which the state enters into an agreement with the Department and ending with weeks of unemployment ending on or before December 31, 2020.

This program covers individuals who: have exhausted all rights to regular UC under state or federal law; have no rights to regular UC under any other state or federal law; are not receiving compensation under the UC laws of Canada; and are able to work, available for work, and actively seeking work. However, states shall offer flexibility in meeting the “actively seeking work” requirement if individuals are unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.

Among the requirements of this program is a non-reduction rule, which prohibits states from changing the computation method governing regular UC law in a way that results in the reduction of average weekly benefit amounts or the number of weeks of benefits payable (*i.e.*, maximum benefit entitlement).

- vii. *Temporary financing, agreements, and grants for Short-Time Compensation (STC)* (Section 2108 through Section 2111). STC, also known as Shared Work or Work Share, is a lay-off aversion program where an employer reduces the hours for a group of workers to avoid layoffs and these workers receive a partial unemployment benefit payment.

Section 2108 provides that states with an existing STC program under section 3306(v) of the Federal Unemployment Tax Act (FUTA) may be reimbursed for 100 percent of STC benefit costs, up to a maximum of 26 weeks of STC per individual. These reimbursements are available starting with weeks of unemployment beginning on or after March 27, 2020 and ending with weeks of unemployment ending on or before December 31, 2020.

If a state enacts a new law providing for the payment of STC after March 27, 2020, then reimbursements are available starting with the effective date of the state law enactment and ending with weeks of unemployment ending on or before December 31, 2020.

Section 2109 provides that states without an existing STC program in the state’s UC law may provide STC benefits under an agreement with the Secretary of Labor and be reimbursed for one-half of STC benefit costs, with the employer paying the other half, up to a maximum of 26 weeks of STC per individual. This

federal STC program is available for weeks of unemployment beginning on or after the date on which the state enters into an agreement with the Department and ending with weeks of unemployment ending on or before December 31, 2020.

Section 2110 provides for a \$100 million grant to be shared across states for implementation or improved administration, and promotion and enrollment of a state's STC program. Each state's share is calculated based on \$100 million minus funds used by the Department for outreach (up to 0.25 percent), multiplied by the state's proportionate share of calendar year 2018 FUTA taxable wages, as described under Section 903(a)(2)(B), SSA (42 U.S.C. §1103(a)(2)(B)). Grant applications must be submitted by December 31, 2023.

Section 2111 provides that the Department shall develop model legislative language, or disseminate existing model language, which may be used by states in developing and enacting STC programs. The Department will also develop reporting requirements for states and provide technical assistance. The Department expects that the reporting requirements and technical assistance will be similar to those developed following enactment of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96). Please see materials on the STC landing page on WorkforceGPS at <https://stc.workforcegps.org/>.

A summary table of these provisions is included with **Attachment 1**.

- b. **Coordination of Programs.** An individual may establish eligibility for multiple benefit programs, including multiple programs authorized in the CARES Act. The information provided below regarding the order of payment is contingent on the individual meeting all eligibility criteria for the respective program(s). It is also contingent on the state having entered into an agreement with the Secretary of Labor to administer such program(s).
 - i. For an individual who is eligible for regular UC (including UCFE and UCX), the following order of payment applies.
 - A. The individual must first apply for and receive regular UC. The amount and duration of these benefits are dependent on state law.
 - B. If the individual exhausts regular UC, the individual may then be eligible to receive PEUC under section 2107. The duration of these benefits is limited to 13 weeks.
 - C. If the individual exhausts PEUC and the state has “triggered on” to EB as defined under the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. §3304 note), the individual may then be eligible to receive EB. The duration of these benefits is up to 13 or 20 weeks, dependent on the state's unemployment rate and if state law includes a trigger for periods of high unemployment.

D. If the state is not “triggered on” to EB or the individual exhausts EB, the individual may then be eligible to receive PUA under section 2104. Note that at least one of the identified COVID-19 related reasons specified in section 2102(a)(3)(A)(ii)(I) must apply to the individual in order to be eligible for PUA. The duration of these benefits is generally limited to 39 weeks, minus any weeks that the individual received from regular UC and EB. The weeks for which an individual collected PEUC will not be deducted from the individual’s PUA entitlement.

If a state “triggers on” to EB during the period in which an individual is collecting PUA and the individual has not previously exhausted entitlement to EB for the respective benefit year, then the individual must stop collecting PUA and file for EB. The thresholds for a state to trigger “on” to EB are described in Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. §3304 note).

If the individual meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after the programs listed above.

- ii. For an individual who is not eligible for regular UC, extended benefits under state or federal law, or PEUC, and who meets the requirements under section 2102(a)(3)(A)(ii)(I), the individual may collect PUA under section 2102. The duration of these benefits is limited to 39 weeks, minus any weeks that the individual may have received from regular UC and EB.
- iii. The Federal Pandemic Unemployment Compensation (FPUC) under section 2104 provides for an additional \$600 per week to an individual collecting regular UC, PEUC, PUA, EB, STC, TRA, DUA, and SEA. Individuals receive FPUC payments concurrently with payments under these programs. Upon execution of an agreement between the state and Department, this applies to all weeks of unemployment ending on or before July 31, 2020.

A number of states also have provisions within state law for extending the potential duration of benefits during periods of high unemployment for individuals in approved training who exhaust benefits, or for a variety of other reasons.¹ Although some state laws call these programs “extended benefits,” the Department uses the term “additional benefits” (AB) to avoid confusion with the federal-state EB program. FPUC is not payable to individuals receiving AB payments. The order of payment for AB within the context of the multiple programs described above is dependent on state law.

¹ Reference Table 4-4 of the *Comparison of State Unemployment Insurance Laws* found at <https://oui.doleta.gov/unemploy/statelaws.asp>.

No payments for PEUC or PUA may be made for weeks of unemployment ending on or after December 31, 2020. Further details regarding definitions for terms and eligibility criteria for each program will be provided in future guidance.

- c. **Funding for States.** For benefit programs included in the CARES Act, full reimbursement of benefits payable for PUA, FPUC, and PEUC will be made available to state agencies through Treasury’s Automated Standard Application for Payments (ASAP) system.

Federal funding for emergency unemployment relief for governmental entities and non-profit organizations and temporary full federal funding of the first week of regular compensation for states with no waiting week will be provided for as transfers from the Federal Unemployment Account to state unemployment accounts.

Eligible reimbursements of STC benefits under section 2108 and section 2109 will be provided on a monthly basis to states through the Health and Human Services Payment Management System. Upon approval, STC grants described in section 2110 will be transferred to state unemployment accounts.

For administrative expenses, the CARES Act provides for reimbursement of such sums as the Secretary estimates to be necessary for implementation of certain provisions contained in the Act. More specific information on detailed benefit transactions and computation and delivery of administrative expenses is forthcoming in subsequent guidance.

- d. **Emergency Flexibility for State Staffing.** CARES provides for temporary and limited emergency flexibility regarding the suspension of required merit personnel standards, as discussed below.

States are reminded of the existing flexibility described in UIPL No. 12-01, *Outsourcing of Unemployment Compensation Administrative Functions*, issued on December 28, 2000, and UIPL No. 12-01, Change 1, *Outsourcing of Unemployment Compensation Administrative Functions – Claims Taking*, issued on November 26, 2007.

Staffing Flexibilities Provided in the CARES Act

In response to the spread of COVID-19, section 2106, CARES, amends section 4102(b) of EUISAA to read:

“Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, employer experience rating, **or, subject to the succeeding sentence, personnel standards on a merit basis on an emergency**

temporary basis as needed to respond to the spread of COVID-19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law. **The emergency flexibility for personnel standards on a merit basis shall only apply through December 31, 2020, and is limited to engaging of temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.”** (emphasis added).

This provision gives states maximum flexibility to recruit and select staff through December 31, 2020, to quickly process applications and claims. Note that the flexibility only applies for responding to workload and increased demand resulting from the spread of COVID-19.

Within this emergency flexibility, states must continue to ensure that eligibility decisions are based solely on the facts of each case and a reasonable application of the state’s UC law to those facts. States must also ensure that individuals making decisions have the knowledge and training necessary to make the correct decisions. States are reminded of the quality standards, as described in 20 C.F.R. Part 602 and further discussed in ET Handbook No. 301 (5th Edition, Change 1), *UI Performs: Benefits Timeliness and Quality Nonmonetary Determinations Quality Review* and ET Handbook No. 395 (5th Edition), *Revision to the State Operations Handbook for the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Program*, which remain in effect.

States should work closely with their human resources departments to increase staffing levels quickly to respond to the increased demand.

- e. **Emergency Flexibility across Programs.** Many states have adopted temporary emergency flexibility measures for their regular UC program, as provided by section 4102(b) of EUISAA, as discussed in UIPL No. 13-20.

The eligibility requirements for collecting PUA are different from those of regular UC and will be addressed in forthcoming guidance. The relationship between temporary emergency flexibility measures for regular UC and EB will also be addressed in future guidance.

Any temporary emergency flexibility measures that states have adopted for regular UC under 4102(b) of EUISAA are applicable to the administration of PEUC. Additionally, section 2107(a)(7)(B) of the CARES Act requires that states provide flexibility for PEUC “in case of individuals unable to search for work because of COVID-19, including because of illness quarantine, or movement restriction.”

5. **Inquiries.** We encourage states to contact the Department for technical assistance. Please direct inquiries to covid-19@dol.gov, with a copy to the appropriate Regional Office.

6. **References.**

- Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Title II Subtitle A Relief for Workers Affected by Coronavirus Act;
- Families First Coronavirus Response Act (Pub. L. 116-127), including Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA);
- Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96);
- Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. §3304 note;
- Section 303, Social Security Act (SSA), 42 U.S.C. §503;
- Section 3306, Federal Unemployment Tax Act (FUTA), 42 U.S.C. §3306;
- 20 C.F.R. Part 602;
- UIPL No. 12-01, *Outsourcing of Unemployment Compensation Administrative Functions*, issued on December 28, 2000, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1736;
- UIPL No. 12-01, Change 1, *Outsourcing of Unemployment Compensation Administrative Functions – Claims Taking*, issued on November 26, 2007, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2558;
- UIPL No. 10-20, *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*, issued on March 12, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8893;
- UIPL No. 13-20, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020*, issued on March 22, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634;
- ET Handbook No. 301 (5th Edition, Change 1), *UI Performs: Benefits Timeliness and Quality Nonmonetary Determinations Quality Review*, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2158;
- ET Handbook No. 395 (5th Edition), *Revision to the State Operations Handbook for the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Program*, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2822; and
- Short-Time Compensation (STC) landing page on WorkforceGPS, <https://stc.workforcegps.org/>.

7. **Attachment(s).**

- **Attachment I:** Summary of Programs for the Relief for Workers Affected by Coronavirus Act

**Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Public Law (Pub. L.) 116-136
Summary of the Unemployment Insurance (UI) provisions in Title II, Subtitle A**

Program and Section Reference from Act	Period of Applicability	What it Does
Pandemic Unemployment Assistance (PUA) (Sec. 2102)	Weeks of unemployment beginning on or after 01/27/20 through 12/31/20	Provides for up to 39 weeks of benefits to individuals who are self-employed, seeking part-time employment, or otherwise would not qualify for regular unemployment compensation (UC) or extended benefits under state or federal law or Pandemic Unemployment Compensation (PEUC) under section 2107. Coverage includes individuals who have exhausted all rights to regular UC or extended benefits under state or federal law or PEUC.
Emergency Unemployment Relief of Governmental Entities and Non-profit Organizations (Sec. 2103)	Weeks of unemployment from 03/13/20 through 12/31/20	<p>Authorizes the Department to issue guidance to allow states to interpret their state UC laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest.</p> <p>Also provides for transfers to a state’s account in the unemployment trust fund from the Federal Unemployment Account to allow partial reimbursements (generally 50 percent of the amount of payments in lieu of contributions) to state and local governmental entities, certain nonprofit organizations, and federally recognized Indian tribes.</p>
Federal Pandemic Unemployment Compensation (FPUC) (Sec. 2104)	Weeks of unemployment beginning after the date of signed agreement through 07/31/20	Provides individuals who are collecting regular UC, PEUC, PUA, EB, STC, TRA, DUA, and SEA with an additional \$600 per week.

Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment (Sec. 2105)	Weeks of unemployment beginning after the date of signed agreement through 12/31/20	For states without a waiting week, provides 100% federal funding for the total amount of regular UC paid to individuals for their first week of regular UC.
Emergency State Staffing Flexibility (Sec. 2106)	03/27/20 through 12/31/20	Provides state agencies with emergency flexibility for personnel standards on a merit basis limited to engaging of temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.
Pandemic Emergency Unemployment Compensation (PEUC) (Sec. 2107)	Weeks of unemployment beginning after the date of signed agreement through 12/31/20	Provides for up to 13 weeks of benefits to individuals who have exhausted regular UC under state or federal law, have no rights to regular UC under any other state or federal law, are not receiving compensation under the UC laws of Canada, and are able to work, available for work, and actively seeking work. However, states must offer flexibility in meeting the “actively seeking work” requirement if individuals are unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.
Temporary Financing for existing Short-Time Compensation (STC) Programs (Sec. 2108)	03/27/20 through 12/31/20	Provides that states with an existing STC program may be reimbursed for 100 percent of STC benefit costs, up to a maximum of 26 weeks of STC per individual.
Temporary Financing of STC agreements (Sec. 2109)	Weeks of unemployment beginning after the date of signed agreement through 12/31/20	Provides that states without an existing STC program may provide STC benefits under an agreement with the Secretary of Labor and be reimbursed for one-half of STC benefit costs, up to a maximum of 26 weeks of STC per individual.
Grants for STC Programs (Sec. 2110)	Grant applications must be submitted by 12/31/23	Provides for a \$100 million grant to be shared across states for implementation or improved administration, and promotion and enrollment of the state’s STC program.

Assistance and Guidance for Administering Programs (Sec. 2111)	Effective 03/27/20	Provides that the Department shall develop model legislative language or disseminate existing model language, which may be used by states in developing and enacting STC programs. The Department will also develop reporting requirements for states and provide technical assistance.
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