

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DFAS
	DATE August 12, 2020

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 18-20, Change 1

TO: STATE WORKFORCE AGENCIES

**FROM: JOHN PALLASCH /s/
Assistant Secretary**

SUBJECT: Amendments to the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Emergency Unemployment Relief for State and Local Governmental Entities, Certain Nonprofit Organizations, and Federally-Recognized Indian Tribes

1. **Purpose.** To provide states with instructions for implementing the recent statutory changes to the emergency unemployment relief for state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian Tribes provided in the Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 (“Protecting Nonprofits Act”), Public Law (Pub. L.) 116-151 which amends Section 903(i) of the Social Security Act (SSA) (42 U.S.C. § 1103(i)). Section 903(i), SSA, was created by Section 2103 of the CARES Act (Pub. L. 116-136).
2. **Action Requested.** The U.S. Department of Labor’s (Department) Employment and Training Administration (ETA) requests State Workforce Administrators to 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 unemployment insurance (UI)-related provisions that respond to the economic effects of the Coronavirus Disease 2019 (COVID-19) pandemic.
3. **Summary and Background.**
 - a. Summary – On March 27, 2020, Section 903(i) was added to the SSA (42 U.S.C. § 1103(i)) with the enactment of the CARES Act, providing emergency relief by way of reimbursement for amounts owed by state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian Tribes (“reimbursing employers”). On August 3, 2020, the President signed into law the Protecting Nonprofits Act. The Protecting Nonprofits Act amends Section 903(i), SSA, by changing the method of emergency relief provided to reimbursing employers, and makes a small number of technical amendments. This UIPL discusses the amendments made by the Protecting Nonprofits Act and provides operating guidance to states.

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

Prior to the enactment of the Protecting Nonprofits Act, states were required to use the transfer of federal funds provided for emergency relief under Section 903(i), SSA, exclusively to reimburse employers for amounts paid in lieu of contributions. Thus, after any state liability relief was applied, a bill specifying the amount due in lieu of contributions was provided to the employer. The employer must have paid this bill in full, after which the state would provide a reimbursement using federal funds in an amount up to 50 percent of the amount of unemployment compensation (UC) paid by the state to the claimant (as described in Sections 4.a. and c. of UIPL No. 18-20).

Under the amendments made by the Protecting Nonprofits Act, states are required to use the transfer of federal funds provided under Section 903(i), SSA, exclusively to reduce the amount required to be paid by reimbursing employers in lieu of contributions. Thus, the state may reduce the amount required to be paid in lieu of contributions by up to 50 percent of the amount of compensation paid before providing the employer with a bill for any remaining amount owed. Attachment I provides the statutory language.

- b. Background – Section 2103 of the CARES Act authorized emergency unemployment relief for reimbursing employers. Section 2103(b) of the CARES Act added a new Section 903(i), SSA (42 U.S.C. § 1103(i)). The Department issued UIPL No. 18-20 on April 27, 2020, to provide guidance to the states on how to implement Section 2103 of the CARES Act.

- 4. **Guidance.** The Protecting Nonprofits Act eliminates the requirement described in UIPL No. 18-20 that reimbursing employers must first pay the amount due in lieu of contributions to obtain emergency relief with the federal funds provided under Section 903(i), SSA. States must now use the federal funds provided under Section 903(i), SSA, exclusively to reduce the amount required to be paid by the reimbursing employer in lieu of contributions.

This guidance discusses the impact of the changes made in the Protecting Nonprofits Act. Attachment II of this UIPL provides four examples demonstrating the practical effects of such emergency relief to reimbursing employers.

Timing of Funds Transfer from the Federal Unemployment Account (FUA) (Section 903(i)(1)(A), SSA) (42 U.S.C. § 1103(i)(1)(A)). Section 903(i)(1)(A), SSA, authorizes the transfer of funds from FUA to the unemployment fund accounts of the states in the unemployment trust fund. Section 2(a)(1) of the Protecting Nonprofits Act amends this section to allow for a transfer of funds “with respect to” the applicable period, instead of only during the applicable period.

The applicable period covered by Section 903(i), SSA, includes weeks of unemployment beginning after March 12, 2020, and ending on or before December 31, 2020, even if the unemployed individual is not unemployed as a result of COVID-19. However, states will likely not be able to process the billing of payments due in lieu of contributions for this entire time period by December 31, 2020. This amendment allows the transfer of funds from FUA to occur after December 31, 2020 to provide emergency relief for benefits paid during the applicable period.

Amount of Funds Transferred from FUA (Section 903(i)(1)(B), SSA) (42 U.S.C. § 1103(i)(1)(B)). Section 903(i)(1)(B), SSA, authorizes transfers from FUA to state unemployment funds for one-half of the amount of compensation paid by the state attributable to services performed in the employ of state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian tribes that opt to make payments in lieu of contributions (*i.e.*, as noted above, reimbursing employers). This process remains unchanged from UIPL No. 18-20.

Amount of Emergency Relief Provided to the Employer (Section 903(i)(1)(C), SSA) (42 U.S.C. § 1103(i)(1)(C)). The Protecting Nonprofits Act amends Section 903(i)(1)(C), SSA, to read:

Notwithstanding any other provision of law, funds transferred to the account of a State under subparagraph (A) **shall be used exclusively to reduce the amounts required to be paid in lieu of contributions** into the State unemployment fund pursuant to such section by governmental entities and other organizations described in section 3309(a) of such Code. (Emphasis added).

When read in conjunction with Section 903(i)(1)(B), SSA, states may use the federal funds provided under Section 903(i), SSA, exclusively to reduce the amounts required to be paid in lieu of contributions for up to one-half of the amount of compensation paid.

- a. **Transition Period for State Administration.** The Protecting Nonprofits Act provides states with a choice in processing emergency relief for weeks of unemployment beginning after March 12, 2020 and ending before August 3, 2020. States may choose to (1) bill reimbursing employers, as described in UIPL No. 18-20, for the amount owed in lieu of contributions and then issue reimbursements using the federal funds provided under Section 903(i), SSA, or (2) use such federal funds to retroactively reduce the amounts required to be paid for such weeks as described in this UIPL.

States choosing to issue reimbursements as described in UIPL No. 18-20 should follow the guidance provided in UIPL No. 18-20 as it relates to processing financial transactions (Section 4.c.) and reporting (Section 4.g.) for such weeks of unemployment.

For all weeks of unemployment beginning on or after August 3, 2020, states must use the federal funds provided under Section 903(i), SSA, exclusively to reduce the amounts required to be paid in lieu of contributions as described in this UIPL.

- b. **Update on Processing Financial Transactions.** Monthly transfers to the state unemployment fund accounts will represent 50 percent of the benefit disbursements for state and local governmental entities, certain nonprofit organizations, and Federally-recognized Indian tribes reported on lines 33, 34, and 35 of the ETA 2112 report. Upon receipt of the report, the Department will certify to the Secretary of Treasury for the transfer of amounts from FUA to the unemployment fund account of the state in the unemployment trust fund.

Withdrawal from the state unemployment account will be accomplished using the transaction “EMERGENCY US RELIEF” account on Treasury’s Automated Standard Application for Payments (ASAP) system.

Upon expiration of the applicable period for the provisions of Section 903(i), SSA, and state reconciliation of authorized amounts, unused amounts of funding transferred remaining in state accounts will be transferred back to the FUA.

- c. **Effect of State Liability Relief Provisions.** As described in Section 5.b. of UIPL No. 21-80: “Liability or non-liability of reimbursing employers is to be determined under principles, as applied in the State law, of attribution of benefits to service in the employ of particular reimbursing employers as provided in Section 3309(a)(2) of [the Federal Unemployment Tax Act (FUTA)]. Such principles may be analogous to noncharging, but they should be implementations under the State law of Section 3309(a)(2).” State liability relief effectively reduces the “amounts required to be paid” on a state-by-state basis because of the fact that Section 3309(a)(2), FUTA determines the “amount” of UC “attributable” to reimbursing employers under state law, not as the full UC paid, under this UIPL.

As stated earlier, federal funds provided under Section 903(i), SSA, shall be used exclusively to reduce the amounts required to be paid in lieu of contributions for up to one-half of the amount of compensation paid. As under the pre-amendment version of Section 903(i), SSA, states that choose to relieve employers of more than 50 percent of the amount owed will be required to return the balance of the federal funds to FUA. We encourage states to contact ETA through the covid-19@dol.gov inbox (with a copy to the appropriate ETA Regional Office) for technical assistance as they consider any changes.

- d. **Federal Government as an Employer.** As noted in UIPL No. 18-20, the Federal Government is not an employer included in Section 3309(a), FUTA (26 U.S.C. §3309(a)), and, therefore, is not included in the emergency relief under Section 903(i), SSA. Thus, Section 903(i), SSA, has no impact on claims under the Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX) programs.
- e. **Update on the Applicability to Other UI Provisions in the CARES Act.** As noted in UIPL No. 18-20, payments under the federal programs created by the CARES Act are not covered under this provision because those amounts are not owed by the reimbursing employer. These include Pandemic Unemployment Assistance (PUA) under Section 2102 of the CARES Act, Federal Pandemic Unemployment Assistance (FPUC) under Section 2104 of the CARES Act, and Pandemic Emergency Unemployment and Compensation (PEUC) under Section 2107 of the CARES Act. These programs do not result in assessments of payments due in lieu of contributions from employers, and, thus, payments under these programs are not subject to emergency relief under Section 903(i), SSA.

The Protecting Nonprofits Act provides for federal funds to be used directly by the states to reduce the amounts required to be paid by reimbursing employers in lieu of contributions, rather than as a reimbursement to such employers. Therefore, the applicability of Section 903(i), SSA, to other UC provisions in the CARES Act is updated from the guidance previously provided in UIPL No. 18-20.

To the extent that payment of the first compensable week of regular UC or payment of Short-Time Compensation (STC) results in the assessment of a payment due in lieu of contributions under state law, the amount due may be reduced using federal funds provided under Section 903(i), SSA.

- f. **Update on the Applicability to Federal Share of Extended Benefits (EB).** As noted in Section 4.f. of UIPL No. 24-20, EB costs attributable to state and local governmental entities and Federally-recognized Indian tribes are not sharable and, thus, not eligible for federal funding under Section 4105 of the Families First Coronavirus Response Act as set out in Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) (Pub. L. 116-127). However, to the extent that payment of EB results in the assessment of a payment due in lieu of contributions under state law, the amount due may be reduced using federal funds provided under Section 903(i), SSA.

As noted in Section 4.d. of UIPL No. 24-20, EB costs attributable to 501(c)(3) nonprofit organizations are sharable as defined in Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) and, thus, a state may qualify for 100 percent federal funding under EUISAA for the weeks of EB attributable to such service. *See* UIPL No. 13-20 for additional information on 100 percent federal funding of EB.

- g. **Reporting.** States should report the amount of the federal funds provided under Section 903(i), SSA, that are transferred into the state unemployment account on columns C and E of line 15 in the ETA 2112 report.

5. **Inquiries.** States should direct inquiries to the covid-19@dol.gov and copy the appropriate ETA Regional Office.

6. **References.**

- Protecting Nonprofits from Catastrophic Case Flow Strain Act of 2020 (“Protecting Nonprofits Act”) (Pub. L. 116-151);
- 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);
- Section 903, Social Security Act (SSA), 42 U.S.C. § 1103;
- Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26 U.S.C. 3304 note);
- Section 3309, Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3309;

- UIPL No. 24-20, *Temporary Changes to the Federal-State Extended Benefits (EB) Program in Response to the Economic Impacts of the Coronavirus Disease 2019 (COVID-19) Pandemic Emergency*, issued May 14, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7132;
- UIPL No. 18-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Emergency Unemployment Relief for State and Local Governmental Entities, Certain Nonprofit Organizations, and Federally-Recognized Indian Tribes*, issued April 27, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5893;
- UIPL No. 13-20, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020*, issued March 22, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634; and
- UIPL No. 21-80, *Secretary’s Decision on Attribution of Benefit Liability to Reimbursing Employers in Proceedings as to Delaware, New Jersey, and New York*, issued February 29, 1980, https://oui.doleta.gov/dmstree/uipl/uipl80/uipl_2180.htm.¹

7. **Attachment(s).**

- Attachment I: Statutory Language of the Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 (Pub. L. 116-151).
- Attachment II: Examples of the Impact of Section 903(i) of the Social Security Act (SSA), as amended by the Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 (Pub. L. 116-151).

¹ We note that the link to this document shows an expiration date of February 28, 1981. However, per Training and Employment Notice (TEN) No. 09-19, issued November 15, 2019, this remains an active UIPL.

**Statutory Language of the
Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020
(Public Law 116-151)**

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020”.

SEC. 2. IMPROVING EMERGENCY UNEMPLOYMENT RELIEF FOR GOVERNMENTAL ENTITIES AND NONPROFIT ORGANIZATIONS.

(a) **IN GENERAL.**—Section 903(i)(1) of the Social Security Act (42 U.S.C. 1103(i)(1)) is amended—

- (1) in subparagraph (A), by striking “during” and inserting “with respect to”;
- (2) in subparagraph (B), by striking “3309(a)(1)” and inserting “3309(a)”; and
- (3) by striking subparagraph (C) and inserting the following new subparagraph:

“(C) Notwithstanding any other provision of law, funds transferred to the account of a State under subparagraph (A) shall be used exclusively to reduce the amounts required to be paid in lieu of contributions into the State unemployment fund pursuant to such section by governmental entities and other organizations described in section 3309(a) of such Code.”.

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the amendments made by subsection (a) shall take effect as if included in the enactment of section 2103 of the Relief for Workers Affected by Coronavirus Act (contained in subtitle A of title II of division A of the CARES Act (Public Law 116–136)).

(2) **APPLICATION TO WEEKS PRIOR TO ENACTMENT.**—For weeks of unemployment that occurred after March 12, 2020, and prior to the date of enactment of this section, States may—

(A) issue reimbursements in accordance with section 903(i)(1)(C) of the Social Security Act, as in effect prior to the date of enactment of this section; or

(B) reduce the amounts required to be paid in accordance with such section 903(i)(1)(C), as amended by subsection (a).

Attachment II to UIPL No. 18-20, Change 1

**Examples of the Impact of Section 903(i) of the Social Security Act (SSA),
as amended by the Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 (Pub. L. 116-151)**

The following examples show how an employer that makes payments in lieu of contributions is impacted by the amendments to Section 903(i), SSA, specifically in relation to how the state administers liability relief under state law.

	Example 1: State provides 50% liability relief	Example 2: State provides 100% liability relief	Example 3: State provides no liability relief	Example 4: State provides 70% liability relief
Part (1) Amount due from the employer				
(a) Compensation paid from state unemployment fund and attributable to service with the entity	\$1,000	\$1,000	\$1,000	\$1,000
(b) State liability relief	-\$500	-\$1,000	-\$0	-\$700
(c) Subtotal – Amount due in lieu of contributions	\$500	\$0	\$1,000	\$300
(d) Federal emergency relief to reduce the amount due in lieu of contributions (available up to one-half of Part (1)(a))	-\$500	\$0	-\$500	-\$300
(e) Amount due from employer	\$0	\$0	\$500	\$0
Part (2) Amount of federal funds available to the state				
(a) Funds transferred from Federal Unemployment Account (FUA) into the state unemployment fund under Section 903(i)(1)(B), SSA (equal to one-half of Part (1)(a))	\$500	\$500	\$500	\$500
(b) Federal emergency relief to reduce the amount due in lieu of contributions (equal to Part (1)(d))	-\$500	-\$0	-\$500	-\$300
(c) Amount that state must return to FUA²	\$0	\$500	\$0	\$200
Summary				
Amount of benefits paid from state unemployment fund (equal to Part (1)(a))	\$1,000	\$1,000	\$1,000	\$1,000
Amount owed by employer after state liability relief and federal emergency relief (equal to Part (1)(e))	\$0	\$0	\$500	\$0
Net impact on state unemployment fund (equal to Part (1)(b))	-\$500	-\$1,000	\$0	-\$700

² Section 903(i)(1)(C), SSA, provides that these funds are to be used exclusively to reduce the amounts required to be paid in lieu of contributions.