

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 603****RIN 1205-AB18****Federal-State Unemployment
Compensation Program (UC);
Confidentiality and Disclosure of State
UC Information****AGENCY:** Employment and Training
Administration, Labor.**ACTION:** Notice of Proposed Rulemaking
(NPRM); request for comments.

SUMMARY: This proposed rule would set forth statutory confidentiality and disclosure requirements of Title III of the Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA) concerning unemployment compensation (UC) information. It would also amend the Income and Eligibility Verification System (IEVS) regulations, a system of required information sharing primarily among state and local agencies administering several federally assisted programs.

DATES: Written comments must be submitted on or before October 12, 2004.

ADDRESSES: Comments may be mailed or delivered to Cheryl Atkinson, Administrator, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-4231, Washington, DC 20210. Comments may be submitted electronically to the Office of Workforce Security at the e-mail address: confidentialityrule@dol.gov. Receipt of submissions, whether by U.S. mail, other delivery, or e-mail, will not be acknowledged.

All comments will be available for public inspection and copying during normal business hours at the Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-4231, Washington, DC 20210. Copies of the proposed rule are available in alternate formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The proposed rule is also available at the Web address <http://www.workforcesecurity.doleta.gov>.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Chief, Division of Legislation, Office of Workforce Security, Employment and Training Administration, (202) 693-3038 (this is

not a toll-free number) or 1-877-889-5627 (TTY), or by e-mail at hildebrand.gerard@dol.gov.

SUPPLEMENTARY INFORMATION:**Background**

On March 23, 1992, the Employment and Training Administration (ETA) published a proposed rule (57 FR 10063) concerning the confidentiality and disclosure of state UC information. The proposed rule was never finalized. Commenters expressed different views over how restrictive the rule should be, and some found the proposed rule unnecessarily lengthy and complex. Given the lapse of time, ETA has decided to publish a new proposed rule, described below.

Discussion of Proposed Rule

As explained below, ETA believes that confidentiality protections for UC information (meaning information in the records of a state or state UC agency that pertains to the administration of state UC law) are still necessary. Comments on the 1992 proposal will become part of the new rulemaking record and were considered in developing this proposed rule. This proposed rule sets forth requirements very similar to those in the 1992 proposal, but it would allow more optional state disclosures. It would also now permit the Department to waive safeguards and agreement requirements for disclosures to Federal agencies which have in place adequate alternative safeguards for protecting the confidentiality of information and an appropriate method of paying or reimbursing the state UC agency for costs involved in such disclosures. In addition, this proposed rule is streamlined. Whereas the text of the 1992 proposal contained 12 subparts and 77 sections, this proposal is condensed into three subparts and 16 sections. Further, it uses plain language and a user-friendly question-and-answer format.

This proposed rule would implement Federal UC law provisions concerning confidentiality and disclosure of UC information and establish uniform minimum requirements for the payment of costs, safeguards, and data-sharing agreements to ensure responsible use when UC information is disclosed. The confidentiality requirement implemented by this rule is derived from Section 303(a)(1), SSA. The disclosure requirements are from Sections 303(a)(7), (c)(1), (d), (e), (f), (h), and (i) of the SSA and Section 3304(a)(16), FUTA. This proposed rule would revise the regulations at 20 CFR Part 603, which currently implement

only Section 303(f) (concerning IEVS) of the SSA, to implement all of these statutory provisions. (Section 303(f) requires that each state UC agency provide for information to be requested and exchanged with state and local agencies administering several federally assisted programs for purposes of income and eligibility verification, in accordance with a state system which meets the requirements of Section 1137 of the SSA.) The disclosure provisions that this rule would implement all require disclosure to government entities, but they vary with respect to the specific information to be disclosed and the terms and conditions of disclosure.

This rule does not address the scope of the Secretary of Labor's authority under Section 303(a)(6) of the SSA to require reports from the states. We note this because the preamble to the 1992 proposed rule asked for comments concerning the scope of this provision. We have decided not to address this matter in this proposed rule.

The confidentiality and disclosure requirements in Title III of the SSA relating to UC information are conditions for receipt of grants by the states for UC administration. The disclosure requirements in the FUTA are conditions required of a state in order for employers in that state to receive credit against the Federal unemployment tax under 26 U.S.C. 3302.

Other Federal laws may require use or disclosure of confidential UC information. For example, the Workforce Investment Act (WIA) of 1998, Pub. L. 105-220, requires states to measure their progress in providing services funded under Title I of the WIA against state and local performance measures using "quarterly wage records, consistent with State law." 29 U.S.C. 2871(f)(2); 20 CFR 666.150(a). Because these laws do not condition receipt of UC grants under the SSA or certification for employer tax credits under FUTA on such use or disclosure, this proposed rule would not implement these laws. However, the disclosure of confidential UC information in compliance with the WIA and other Federal laws would be permitted under the general exceptions to confidentiality in § 603.5 of this proposed rule. (For more information on the requirement to use wage records under the WIA, see 20 CFR 666.150.) ETA strongly encourages states whose laws do not permit disclosure for WIA purposes to amend their laws.

We believe that these proposed regulations are necessary and important for several reasons. The Federal Privacy Act does not protect the confidentiality

of UC information even though it is the same type of information, wage and employment information, that is highly protected when collected for the administration of other Federal programs, such as Social Security and the Federal income tax. Except for its provisions governing the collection of Social Security numbers, the Privacy Act does not apply to state records containing UC information because they are not Federal records. Although state laws address the privacy of such records, they do so to varying degrees. At the same time, as mentioned, a number of provisions of Federal law now require use or disclosure of confidential UC information. States have repeatedly sought guidance from the Department of Labor on confidentiality and disclosure issues. Further, several of the provisions in Title III, SSA, instruct the Secretary of Labor to establish safeguards to protect the confidentiality of UC information when disclosed.

The proposed rule is based on several “fair information” principles that are fundamental to any confidentiality policy and are reflected in a number of sections throughout. The principles include notice, choice, access and amendment, security safeguards, and accountability.

Notice. Subjects of an information collection (persons or organizations from or about whom information is collected) should be notified what information is collected and of the possible uses of that information. Under this proposed rule, state UC agencies would be required to inform claimants and employers of the uses of UC information collected, including possible non-UC uses. Specifically, Section 603.11 of this proposed rule would require states to provide individualized notice to claimants at the time of filing an initial claim and periodically thereafter, and to employers on their quarterly wage report form or reimbursement billing, that confidential UC information may be requested and disclosed. A requirement for notice to claimants exists in current part 603. This proposed rule would extend a notice requirement to employers.

Choice. To the extent possible, subjects of an information collection should have choices about how information about them is used. Proposed § 603.5(c) and (d) would allow states to disclose information to an individual, employer, their agent or attorney, or to another third party, on the basis of informed consent. In the case of disclosure to a third party other than an agent or attorney, the proposed

rule would require consent to be in writing and contain features, such as specific identification of the information to be disclosed and the specific purposes for the disclosure, ensuring the consent is truly informed.

Access and amendment. Subjects of an information collection should have the right to access and amend information about them. This is important to ensure the accuracy of information that will be used to make decisions about individuals (such as eligibility for government benefits or services). UC information is used to determine whether an individual is eligible for benefits or an employer is liable for UC taxes. The opportunity to access and amend UC information usually occurs during the claims determination process or when tax coverage decisions are made, because individuals and employers participate and provide input into these processes. Section 603.5(c) would also permit states to provide individuals or employers access to UC information about themselves for non-UC purposes.

Security safeguards. Security controls are important to protect the confidentiality and integrity of data, including data shared with other government agencies or recipients. Section 603.4(b) of this proposed rule would require states to maintain 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” except as provided in this regulation. This would require that state agencies employ effective methods to protect confidentiality of UC information. These methods may include management, operational, and technical security controls.

Section 603.9 would set forth minimum security safeguards that state agencies must require of recipients of disclosed data to ensure continued data confidentiality and integrity. For example, § 603.9(b)(1)(ii) and (iii) would require that information be stored in a place physically secure from access by unauthorized persons and maintained in a way that unauthorized persons cannot obtain the information by any means. Section 603.9(b)(1)(v) would also require instruction of personnel about confidentiality requirements and signed acknowledgments that the instruction occurred. Section 603.9(b)(1)(vi) would require the return or destruction of disclosed UC information once the purpose for which

the information was disclosed has been served. Section 603.9(b)(1)(vii) would require states to maintain a tracking system sufficient to allow an audit of compliance with this regulation’s requirements. Section 603.10(b)(1)(vi) would require data-sharing agreements to include provision for state on-site inspection of recipients to assure compliance with the security safeguards.

Accountability. Mechanisms should exist to ensure the accountability of individuals and entities handling confidential data. Section 603.4(c) of this proposed rule would require state law to provide penalties for any unauthorized disclosure of confidential UC information. Section 603.9(b)(1)(v) would require state agencies to inform employees of the applicable sanctions for unauthorized disclosures. Section 603.9(a) would further require states or state agencies to subject recipients of confidential UC information under data-sharing agreements to penalties provided by state law for unauthorized disclosure. Section 603.10(c) would require suspension and ultimately termination of any data-sharing agreement or contract if a recipient fails to follow the specified safeguards. This provision would also require states to take other action against an entity violating a data-sharing agreement.

Section-by-Section Description of Proposed Rule

Subpart A—Confidentiality and Disclosure Requirements in General

Subpart A sets forth the purpose and scope of the proposed rule, as well as definitions that would apply to subparts B and C.

Section 603.1, Purpose and Scope

This section describes the purposes and scope of proposed new part 603, which differ materially from the purposes and scope of the present part 603. While the present part 603 addresses only the requirements concerning a state UC agency’s participation in the IEVS under Section 303(f) of the SSA, new part 603 would address additional disclosure requirements in Federal UC law and the basic requirement of confidentiality derived from Section 303(a)(1) of the SSA. New part 603 would apply to states and state UC agencies, as defined in § 603.2(f) and (g).

Section 603.2, Definitions

This section defines the terms that would apply to new part 603.

Paragraph (a) defines “claim information” as information about:

- Whether an individual is receiving, has received, or has applied for UC;
- The amount of compensation the individual is receiving or is entitled to receive;

- The individual's current (or most recent) home address; and, for purposes of subpart C (concerning disclosure to an IEVS),

- 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

- 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.

Paragraph (b) defines "confidential UC information" and "confidential information" as any UC information required to be kept confidential under § 603.4.

Paragraph (c) defines "public domain information" as:

- 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;

- 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, appeals records and decisions, and precedential determinations on coverage of employers, employment, and wages; and

- 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.

Paragraph (d) defines "public official" as 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 a legislator in the Federal, state, or local government with oversight responsibility for the UC program.

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

Paragraph (f) defines "state" to mean one of the "states" included in the federal-state UC program, including Puerto Rico, the United States Virgin Islands, and the District of Columbia.

Paragraph (g) defines "state UC agency" to mean an agency charged with administration of a state's UC law. The proposed definition does not

include Employment Service offices or state revenue departments except when administering a state's UC law.

However, officials of such agencies may be able to obtain access to UC information under the exception to confidentiality for public officials, under § 603.5(e).

Paragraph (h) defines "state UC law" to mean the UC law of a state, approved under the FUTA, 26 U.S.C. § 3304(a). Any law of a state (including official interpretations thereof) that may affect state eligibility for Title III, SSA, administrative grants or certification under the FUTA is part of the "state UC law" as defined in this proposed rule. This definition is not intended to cover Wagner-Peyser Act-funded programs or programs funded under the WIA.

Paragraph (i) defines "unemployment compensation (UC)" as cash benefits to individuals with respect to their unemployment.

Paragraph (j) defines "UC information" and "state UC information" as information in the records of a state or state UC agency that pertains to the administration of the state UC law. This definition includes information pertaining to the administration of the state UC law regardless of whether that information is housed by the state UC agency. For example, the definition includes employer UC tax rates, UC tax identification numbers, and claimant weekly benefit amounts, even when those records are housed by a tax agency.

The definition also includes state wage reports, collected under the IEVS required by Section 1137, 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. It does not include IEVS records collected by a state tax department that are neither used for determining UC eligibility nor downloaded to the state UC agency's files. Section 1137(a)(5)(B), SSA, gives the Secretary of Health and Human Services (HHS) primary authority to establish safeguards to protect IEVS records against "unauthorized disclosure for other [non-IEVS] purposes." The Department of Labor has authority only to establish safeguards for IEVS records "in the case of the unemployment compensation program," and under Title III, SSA. Thus, the Department of Labor is responsible for establishing safeguards only with respect to IEVS records obtained by a state UC agency for determining benefit eligibility, or copies of IEVS records that have been disclosed to the state UC agency as a result of a crossmatch.

The proposed definition of "UC information" and "state UC information" does not include any information in a state Directory of New Hires, even when the directory is maintained by the state UC agency, since these records are collected for purposes of complying with Title IV, SSA (concerning Federal aid to states for services to needy families with children and for child-welfare services). However, once information from a state directory is disclosed to the state UC agency for UC uses, the disclosed information becomes part of that agency's UC information, and that information would be subject to this proposed rule.

Further, the definition does not include the personnel or fiscal information of a state UC agency. In addition, the proposed definition of "UC information" and "state UC information" does not include information about employment service activities or job training activities, even though such activities may be performed within the same umbrella agency where UC activities are performed, because such information does not pertain to the administration of the state UC law.

Finally, the definition does not include records of the following Federal UC and benefit programs: the Unemployment Compensation for Federal Employees (UCFE) program (5 U.S.C. 8501–8508); the Unemployment Compensation for Ex-Servicemembers (UCX) program (5 U.S.C. 8521–8525); the Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) programs (19 U.S.C. 2271–2321); the NAFTA Transitional Adjustment Assistance (NAFTA-TAA) program (19 U.S.C. 2331) (which is being phased out); and the Disaster Unemployment Assistance (DUA) program (42 U.S.C. 5171); or any Federal UC benefit extension program. This is because such information pertains to the administration of Federal, not state, UC law and is covered by other regulations, operating instructions, and agreements with states.

Paragraph (k) defines "Wage information" to mean information in the records of a state UC agency (and, for purposes of § 603.23, information reported under provisions of state law which fulfill the requirements of Section 1137 of the SSA) about the wages paid to an individual, the Social Security account number (or numbers) of such individual, and the name, address, state, and Federal employer identification number of the employer

who paid such wages to such individual.

Subpart B—Confidentiality and Disclosure Requirements

Subpart B sets forth the basic proposed requirement of confidentiality, permissible exceptions to the rule of confidentiality, and mandatory disclosure requirements. It also proposes requirements on: (1) Payment of costs (for disclosures of UC information which are not made in the course of the administration of the state UC laws), (2) safeguards, (3) agreements between the state UC agency and agencies or entities requesting confidential UC information, which set forth the terms and conditions for making such disclosures and the remedies that apply in the case of breach of an agreement, and (4) conformity and substantial compliance with this proposed rule.

Section 603.3, Purpose and Scope

This section sets forth the purpose and scope of proposed subpart B. It expressly states that the purpose of subpart B is to set forth the requirements of Section 303(a)(1) of the SSA, as such requirements concern the confidentiality of state UC information, to implement the disclosure requirements of Sections 303(a)(7), (c)(1), (d), (e), (h), and (i), SSA, and Section 3304(a)(16), FUTA, and to establish uniform minimum requirements for the payment of costs, safeguards, data-sharing agreements when UC information is disclosed, and conformity and substantial compliance with this proposed rule. Subpart B would apply to states and state UC agencies, as defined in § 603.2(f) and (g).

Section 603.4, Confidentiality Requirement of Federal UC Law

Paragraph (a) of § 603.4 quotes the “methods of administration” requirement of Section 303(a)(1) of the SSA, which is the basis for the confidentiality requirement.

Paragraph (b) sets forth the Department’s interpretation of Section 303(a)(1), SSA, as including a basic requirement of confidentiality. It would require states to maintain 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 to include provision for barring the disclosure of any such information, except as provided in new part 603.

The confidentiality requirement has its origin in the beginning of the program and is derived from Section 303(a)(1) of the SSA. Section 303(a)(1), SSA, requires states to provide in their laws for such “methods of administration” as the Secretary of Labor determines are “reasonably calculated to insure full payment of unemployment compensation when due.” From the early years of the program this provision has been interpreted to require the confidentiality of information collected from individuals and employers for UC program administration. Confidentiality is necessary to avoid deterring individuals from claiming benefits or exercising their rights, to encourage employers to provide information necessary for program operations, to avoid interference with the administration of the UC program, and to avoid notoriety for the program if program information were misused.

Although the Department of Labor’s interpretation of Section 303(a)(1), SSA, as requiring confidentiality is longstanding, it has not previously been set forth in regulations. However, Unemployment Insurance Program Letters (UIPLs) 23–96 (“Disclosure of Confidential Employment Information to Private Entities”) and 34–97 (“Disclosure of Confidential Unemployment Compensation Information”), which would be superseded upon completion of this Rulemaking, set forth the confidentiality requirement.

The confidentiality requirement would apply, by its express terms, only to state information. (“UC information” is information that “pertain[s] to administration of the State UC law * * *”. (Emphasis added.)) Nevertheless, the regulations and operating instructions governing the Federal UC and benefit programs of UCFE, UCX, TAA, ATAA and DUA require states to apply the same state law confidentiality protections that apply to state UC program information to information of those Federal UC and benefit programs. (See UCFE—20 CFR 609.13(b); UCX—20 CFR 614.14(b); TAA and ATAA—20 CFR 617.57(b); and DUA—20 CFR § 625.16(b).) Thus, in order to fulfill their responsibilities under the respective Federal program regulations and their administrative agreements with the Secretary of Labor, the states would need to apply the confidentiality protections of state law conforming with these part 603 proposed regulations to UCFE, UCX, TAA, ATAA and DUA program information. In addition, in accordance with § 603.6, states would need to apply

the disclosure provisions of proposed part 603 to state-held information from the Federal UC and benefit programs of UCFE, UCX, TAA and ATAA (except, as described in the following paragraph, for confidential business information held by the states under the TAA program), and DUA, as well as to state UC information.

The disclosure provisions of proposed part 603 would not apply, however, to the confidential business information that the states collect under the TAA program, as reauthorized by the Trade Act of 2002, P.L. 107–210, or collected under the NAFTA–TAA program, which is being phased out. A state may, under the reauthorized and expanded TAA program, collect confidential business information upon request by the Secretary of Labor under authority of Section 221(a)(2) of the Trade Act (19 U.S.C. 2271(a)(2)), which requires a state to “assist” the Secretary of Labor in the review of a petition for certification of eligibility to apply for benefits by “verifying such information and providing such other assistance as the Secretary may request.” This information concerns changes in sales or production, imports of competitive articles, and shifts in production. Employers and their customers would be very reluctant to disclose this business information to the state were it subject to disclosure under the proposed exceptions to confidentiality in § 603.5 or the mandatory disclosure requirements of § 603.6. A proposed rulemaking to implement the reauthorized TAA program will address the confidentiality of this business information.

Paragraph (c) would require each state law to contain provisions that are interpreted and applied consistently with the requirements of this subpart and provide for penalties for any disclosure of confidential information that is inconsistent with any provision of this subpart.

Section 603.5, Exceptions to the Confidentiality Requirement

This section sets forth the permissible exceptions to the confidentiality requirement. Disclosure would be permissible under exceptions at paragraphs (a) through (g) only if authorized by state law and if the state determines the resources required for such disclosure does not interfere with the efficient administration of the state UC program and law. Disclosure is permissible under exceptions (h) through (j) without such restriction.

Paragraph (a) would provide that information in the public domain, as defined in § 603.2(c), is not covered by

the confidentiality requirement. This means it would be up to the state to determine whether and how much of such information is open to the public or is kept confidential.

Some UC information, such as employer names and addresses, is public in the sense that it is available from other public sources like telephone directories but is not public domain information for purposes of this rule.

Appeals hearing records and decisions are included in the definition of "public domain information" and, therefore, would be excluded from the confidentiality requirement. The Department of Labor has historically stated, and repeats here, that the public interest in proper administration of the UC program, specifically in payments of benefits only to eligible individuals, and in open governmental adjudicatory proceedings (to preserve a fair process to claimants and employers by avoiding star-chamber-type proceedings), is served by open hearings and hearing records. However, nothing in the proposed rule would prohibit states from making agency hearings or hearing records confidential as a matter of state law or practice.

Paragraph (b) would provide that the confidentiality requirement does not apply to essential program activities, *e.g.* those activities relating to the taking of claims for UC, the determination of eligibility (including appeals), the payment of benefits, the determination of employer liability, the collection of amounts due the state's unemployment fund, or any other activity directly related to the administration of the UC program. As a specific example, Section 303(g), SSA, permits states to withhold UC payable under state laws to recover overpayments of benefits made to individuals by another state or to recover an overpayment of state UC from a payment made under a Federal unemployment benefit or allowance program if the state has entered into an agreement with the Secretary of Labor under Section 303(g)(2), SSA, and if it reciprocally recovers overpayments made under a Federal unemployment benefit or allowance program from state payments. Disclosure of information which is necessary for purposes of carrying out these interstate and cross-program recoveries is permissible under this section (and, as discussed below, such disclosure is required under § 603.6(a)).

The Department of Labor emphasizes that paragraph (b) applies only when disclosure is *necessary* for the proper administration of the UC program. Redisclosure by a recipient for any separate or non-essential purpose is not

authorized under this exception. As a result, prior to any disclosure under this paragraph, states are expected to take reasonable measures to assure that no impermissible redisclosure occurs. If, for example, information is provided to another state's UC agency, this may be as simple as assuring that a state's laws contain similar confidentiality requirements. In the case of disclosure to an agent or contractor, such as a collections agency, this means building confidentiality requirements and safeguards into the contract.

Paragraph (c) would permit disclosure of UC information about an individual to that individual, or of UC information about an employer to that employer.

Paragraph (d) would permit disclosure of UC information on the basis of informed consent to: (1) An agent or attorney of an individual, of information that pertains to that individual, or to an agent or attorney of an employer, of information that pertains to that employer, and (2) to a third party only if that entity obtains a written release from the individual or employer to whom the information pertains. In the case of disclosures to an agent or attorney, the agent or attorney must present a written release from the individual or employer being represented, or, if a written release is impossible or impracticable to obtain, such other form of consent as is permitted by the state UC agency in accordance with state law. In the case of disclosures to a third party, the release must be signed and must include the following statements:

- Specific identification of the information that is to be disclosed;
- That state government files will be accessed to obtain that information;
- The specific purpose or purposes for which the information is sought and a statement that information obtained under the release will be used only for that purpose or purposes; and
- The parties who may receive the information released.

The purpose specified in the release must be limited to providing a service or benefit to the individual signing the release that such individual expects to receive as a result of signing the release, or carrying out administration or evaluation of a public program to which the release pertains. Further, payment of costs, safeguards, and agreements would be required, as provided in proposed §§ 603.8 through 603.10. Also, the states would be required by proposed §§ 603.9 and 603.10 to impose certain penalties for misuse of data, additional audits, and additional terms in disclosure agreements.

The principle behind disclosure to a third party on the basis of informed consent is that individuals and employers should be able to waive their privacy when they believe it is in their interest to do so. The confidentiality requirement exists to serve the interests of individuals and employers as well as the needs of the federal-state UC program. However, as described, additional conditions would be required because of the greater potential threat to employer or individual privacy posed by third-party collection, storage, maintenance, use, and possible misuse of confidential UC information. This question is dealt with in Unemployment Insurance Program Letter 23-96 ("Disclosure of Confidential Employment information to Private Entities," 61 FR 28236), which would be superseded upon completion of this rulemaking.

Finally, the Electronic Signatures in Global and National Commerce Act of 2000 (E-Sign), P.L. No. 106-229, may apply where one or more parties wish to use an electronic informed consent release (§ 603.5(d)) or a disclosure agreement (§ 603.10). 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 would 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 proposed regulation, assure that these informed consent releases and disclosure agreements would be legally enforceable. If an informed consent release or disclosure agreement is to be effectuated electronically, the state would have to 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 would also be required to make certain that the electronic transaction complies with every other condition necessary to make it legally enforceable. A note following proposed § 603.5(d) explains this.

Paragraph (e) would allow disclosure of UC information to a public official in the performance of his or her official duties. Since the 1970s, the Department of Labor's guidance to states has recognized this exception, which allows for a variety of uses of UC information that ETA believes are beneficial, such as law enforcement, fraud and benefit accuracy in programs not addressed by

Federal UC law (for example, Black Lung and state workers' compensation programs), program assessment (for example, of WIA and Vocational Education programs), and research.

"Performance of official duties" means administration or enforcement of law or, in the case of the legislative branch, oversight of UC law. It does not mean the conduct of research by an individual at a public or private university, although, where appropriate, a researcher could obtain access to confidential UC information under the exceptions provided for in paragraph (f) (agent or contractor of a public official) or (d)(2) (disclosure to a third party on the basis of informed consent), discussed elsewhere. ETA believes that there is less risk of unauthorized use or disclosure of UC information if responsibility for safeguarding confidentiality rests within the executive or legislative branches of government. ETA also believes that limiting access within the legislative branch to those legislators who need the information to help oversee the UC program further minimizes the possibility of unauthorized use.

Paragraph (f) would allow disclosure of UC information to an agent or contractor of a public official to whom disclosure is permissible under paragraph (e). This provision takes into account that research is often contracted out by public agencies. If confidential UC information could not be disclosed to agents or contractors of public officials, valuable research might be forgone or become more expensive, as agencies would have to undertake interviews of program participants in order to gather program evaluation information. A public official, ideally one with responsibility for the program or initiative on which research is being conducted, would be required to enter into the written agreement required by proposed § 603.10 and be held responsible for use of the information by the contractor or agent. Rediscovery of such information by a public official to an agent or contractor would be permitted only as provided in proposed § 603.9(c).

When possible, states should provide non-confidential information to researchers in lieu of confidential information. State agencies may, for example, encrypt identifiers before providing data to a researcher so that the researcher cannot identify individuals or employers. The agency could add subsequent years of data for the researcher using the same encryption so that the researcher can conduct longitudinal studies.

Paragraph (g) would provide that the confidentiality requirement does not apply to information collected exclusively for statistical purposes under a cooperative agreement with the Bureau of Labor Statistics (BLS) and that part 603 would 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.

Transfers of information to the BLS would be excepted from the confidentiality requirement because the conditions under which they occur already satisfy the requirements of the confidentiality rule, and ETA does not wish to interfere with the BLS' existing agreements or the ability of the BLS to carry out its statistical programs. Specifically, safeguards, agreements, and payment of costs are already in place. The BLS applies strict safeguards to protect the confidentiality of information it receives. It also funds states for collection and disclosure of information. Finally, transfers of information to the BLS are governed by agreements that provide assurance that these safeguards will be followed.

Paragraph (h) would permit disclosure of UC information in response to a court order, or to an official with subpoena authority, as specified in § 603.7(b).

Paragraph (i) would permit disclosure of UC information as required by Federal law.

Section 603.6, Disclosures Required by Federal UC Law

This section lists disclosures required by Federal UC law. These requirements apply to state UC information as well as to information from the Federal UC and benefit programs of UCFE, UCX, TAA and ATAA (except for the confidential business information compiled by the states under the TAA program), DUA, and any Federal extended UC benefit program. These statutory requirements, by their terms, require disclosure of information maintained regarding these Federal programs, as well as state UC information, either because they specifically state that they include such Federal information or are written broadly enough to cover it. The utility of the information exchanges listed in this section would be impeded if this Federal information was not included in them.

Paragraph (a) sets forth the Department of Labor's interpretation of Section 303(a)(1) of the SSA as requiring disclosure of all information necessary for the proper administration of the UC program. This paragraph requires, for example, disclosure to the Internal

Revenue Service for purposes of UC tax administration or to the Bureau of Citizenship and Immigration Services (formerly the Immigration and Naturalization Service) for purposes of verifying a claimant's immigration status. It also requires disclosure for purposes of interstate and cross-program offsets under Section 303(g), SSA.

Paragraph (b) covers other provisions of Federal UC law, with the exception of Section 303(f), concerning an IEVS, which is addressed in subpart C, that specifically require disclosure of certain state UC information and state-held Federal UC benefit information. These provisions include Sections—

- 303(a)(7), SSA, which 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, the name, address, ordinary occupation, and employment status of each recipient of UC, and statement of such recipient's rights to further compensation under state law.

- 303(c)(1), SSA, which 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. This statutory provision requires a state to make "its records" available to the Railroad Retirement Board. Because Section 303 concerns state administration of the federal-state UC program, we interpret use of the term "records" in Section 303(c)(1) to be limited to disclosure of UC records and not to include other records of the state.

- 303(d)(1), SSA, which 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 state food stamp agencies, any of the following information contained in the records of such state 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.

- 303(e)(1), SSA, which 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 from, and locating, individuals owing such obligations.

As explained in detail in UIPL 45–89 (55 FR 1886, January 19, 1990), Section 303(e)(1) limits required disclosure to use for purposes of establishing “child support obligations” being enforced by a child support enforcement agency. Accordingly, state UC agencies would not be required to disclose information for purposes related to support obligations for the custodial parent of the child receiving services from the child support enforcement agency. The Department intends to pursue legislation that would expand the purposes for which disclosure of wage information (as well as intercept of UC) is required under Section 303(e) to include enforcement of custodial parent support. In the meantime, however, State UC agencies are encouraged to disclose information related to such obligations under the optional disclosure permitted under § 603.5(e).

- 303(h), SSA, which 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).

- 303(i), SSA, which 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 UC 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.

Section 303(i)(2) states that the “Secretary of Labor shall prescribe regulations governing how often and in what form information may be disclosed under paragraph (1)(A)” of Section 303(i). However, what is a useful frequency and format for such disclosure depends upon the needs of a particular requesting agency (in the case of Section 303(i), either HUD or a particular public housing agency) and the amount the agency is willing to reimburse the UC agency for providing the information. These will vary depending upon the circumstances of the particular requesting agency and the state or locality in which it operates. The preferences of the requesting agency may also change over time, along with changes in technology. Thus, in order to provide states and localities with needed flexibility, and to avoid drafting regulatory requirements that may need frequent revision, we have chosen not to regulate the frequency and format of disclosures at this time.

- 3304(a)(16), Federal Unemployment Tax Act (FUTA), which requires each state UC agency—

(i) To disclose, upon request, to any state or political subdivision thereof administering a 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.

Paragraph (c) would require each state law to contain provisions that are interpreted and applied consistently with this section.

Section 603.7, Subpoenas, Other Compulsory Process, and Disclosure to Officials With Subpoena Authority

This section sets forth the Department of Labor’s long-standing position on state responses to subpoenas and other compulsory processes. With two exceptions, it would require the state or

state UC agency to file and pursue a motion to quash, in the appropriate forum, when a subpoena or other compulsory process of a lawful authority, which requires the production of or appearance for testimony about confidential UC information, is served upon the state UC agency or the state. If such a motion were denied, after a hearing in the appropriate forum, confidential UC information may be disclosed, but only upon such terms as the court or other forum may order, including that the recipient protect the disclosed information and pay the state’s or state UC agency’s costs of disclosure.

The proposed exceptions are, first, where a court has previously issued a binding precedential decision that requires such disclosures and, second, when confidential UC information is requested by an official of state or Federal government, other than a clerk of court on behalf of a litigant, with authority to obtain the information by subpoena under state or Federal law. These proposed exceptions recognize that filing a motion to quash in these circumstances may indeed be futile and a waste of administrative resources. They would also facilitate state cooperation with law enforcement.

We believe that filing motions to quash subpoenas involving the disclosure of confidential UC information is an important means of avoiding unnecessary or unlawful disclosures, which might deter claimants from exercising their rights or employers from providing information. Where the exceptions apply, a state may still file such a motion if warranted, or may file a motion to require that the recipient protect the disclosed information or for reimbursement of costs. (As described in proposed § 603.8(b), seeking reimbursement in some manner would be required if grant funds are used to cover the costs of the disclosure.) If the state law is sufficiently rigorous concerning the release of confidential UC information, the courts may be less inclined to enforce subpoenas; so, states may wish to review their state laws in this regard. To conserve time and funds, states may wish to pursue a motion to quash by mail or by telephone if permitted by state law.

Section 603.8, Payment of Costs; Program Income

This section would set forth rules on the use of UC grant funds for disclosures of UC information, recovery of the state’s and state UC agency’s costs for disclosing information not made in the course of the administration of the UC

program, and use of program income. It would require payment of costs for any disclosures made for purposes other than administration of the UC program, with limited exceptions for requests involving incidental costs and some situations involving subpoenas. The statutory principle underlying these rules is that funds granted under Title III of the SSA for the administration of the state UC law may not be used for other purposes. This is required by the explicit statutory terms of Section 302(a) of the SSA (providing for payments to states for "proper and efficient administration" of state UC law), Section 303(a)(8) of the SSA (limiting expenditure of UC grants to amounts necessary for "proper and efficient administration" of state UC law), and Section 303(a)(9) of the SSA (requiring repayment to the Secretary Labor of any funds expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of state UC law). It is a conformity requirement for approved state laws and is a substantial compliance requirement for the states and state UC agencies under Section 303(b) of the SSA. Thus, even if a required disclosure in Title III, SSA, or Section 3304(a)(16) does not explicitly require payment of costs, such payment is required by this section under authority of the sections of Title III, SSA, mentioned above.

Paragraph (a) of § 603.8 sets forth the general rule prohibiting the use of grant funds to pay any of the costs of making any disclosure except as provided in paragraph (b). It also specifies that grant funds may not be used to pay any of the costs of making any disclosures for non-UC purposes under § 603.5(e) (to a public official), § 603.5(f) (to an agent or contractor of a public official), § 603.5(g) (to BLS), § 603.6(b) (as required by Federal UC law for non-UC purposes), or § 603.22 (to HHS or a requesting agency for purposes of an IEVS)).

Paragraph (b) sets out the exceptions when use of grant funds would be permitted to pay the costs of disclosures. Grant funds may be used to pay the costs of disclosures made for purposes of administration of the UC program (which may include some disclosures under §§ 603.5(a) (public domain information), (c) (to an individual or employer), or (d) (on the basis of informed consent)). Grant funds may also be used to pay the costs of disclosures made in response to requests involving only incidental staff time and no more than nominal processing costs, and for disclosures in response to subpoenas under § 603.7(b)(1) (when a court decision requires disclosure) if a court has

denied recovery of costs, or to officials with subpoena authority under § 603.7(b)(2) if the state UC agency has attempted but not been successful in obtaining reimbursement of costs.

Paragraph (c) sets out how costs would have to be calculated. Costs would be required to 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). Costs would be required to be charged to and paid by the recipient and would include any initial start-up costs incurred by the state UC agency, such as computer reprogramming required to respond to a request, and the costs of implementing safeguards and agreements required by §§ 603.9 and 603.10. (Start-up costs would 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 would be 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 when the disclosure is made for purposes of administration of the UC program. By statute (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 Sections 303(h), SSA, and 3304(a)(16)(B), FUTA.

Paragraph (d) would require the payment of costs, calculated in accordance with paragraph (c), to be paid by and collected from the recipient of the information either in advance or by way of reimbursement. If the recipient is not a public official, such costs, except for good reason, would be required to be paid and collected in advance. Payment in advance would mean full payment of costs before or at the time the disclosed information is given in hand or sent to the recipient. ETA's intention is that the "good reason" exception generally be associated with disclosures involving minimal costs.

The requirement for payment of costs would be met when a state UC agency has in place a reciprocal data-sharing agreement or arrangement with another agency or entity. "Reciprocal" means that the relative benefits received by each party to the agreement or arrangement are approximately equal.

Paragraph (e) would provide that reimbursed costs and any funds generated by the disclosure of information are program income and may be used only as permitted by 29

CFR 97.25(g) (on program income). Program income may not be used to benefit a state's general fund or another program.

Section 603.9, Safeguards for Disclosed Information

This proposed section sets forth the safeguards that states and state UC agencies would have to require of recipients who obtain confidential UC information under: §§ 603.5(d)(2) (disclosure to a third party on the basis of informed consent); (e) (disclosure to a public official), except as provided in paragraph (d) of this section; (f) (disclosure to an agent or contractor of a public official); § 603.6(b)(1) through (4), (6), and (7)(i) (disclosures required by Federal UC law, except for disclosures to HHS under Sections 303(h), SSA, and 3304(a)(16)(B), FUTA); or § 603.22 (to a requesting agency for purposes of an IEVS). These safeguards are similar to those in present part 603 that currently apply to disclosures under an IEVS but have been simplified to provide flexibility to states. They would preclude the unauthorized use, access, and redisclosure of the information.

Not all the disclosure requirements of Title III, SSA, referred to above explicitly require safeguards, but Section 303(a)(1), SSA, provides a basis for the requirement. Safeguards protect against the misuse or improper redisclosure of disclosed information and, therefore, like the confidentiality requirement itself, maintain claimant and employer confidence in the UC system and their willingness to participate and cooperate in its administration. This participation and cooperation is essential to the system's effective administration. Requiring safeguards is therefore a "method of administration" reasonably calculated to insure full payment of UC when due.

Paragraph (a) sets forth the general rules, which would require the state or state UC agency to require that the recipient of disclosed information safeguard the information against unauthorized access or redisclosure as provided in paragraphs (b) and (c), and that the recipient be subject to penalties provided by the state law for unauthorized disclosure.

Paragraph (b) sets forth safeguards that the state or state UC agency would have to require of recipients.

Paragraph (b)(1)(i) would require states or state UC agencies to require recipients to use the disclosed information only for purposes authorized by law and consistently with an agreement that meets the requirements of § 603.10.

Paragraph (b)(1)(ii) would require the recipient to store the disclosed information in a place physically secure from access by unauthorized persons.

Paragraph (b)(1)(iii) would require the recipient to store or 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.

Paragraphs (b)(1)(ii) and (iii) can be met by, among other things, placing paper files in a locked cabinet or room, and in the case of information maintained electronically, using electronic passwords or computer encoding to block access by unauthorized persons.

Paragraph (b)(1)(iv) provides for precautions to ensure that only authorized personnel are given access to disclosed information stored in computer systems.

Paragraph (b)(1)(v) would require each recipient agency to give specified instructions to all personnel having access to the disclosed information and to sign an acknowledgment that all such personnel have been so instructed and that they will adhere to the state's or state UC agency's confidentiality requirements and procedures which are consistent with subpart B and the agreement required by § 603.10, and will report any infractions to the state UC agency.

Paragraph (b)(1)(vi) would 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. The state or state UC agency would set appropriate time limits on retention on a case-by-case basis in order to prohibit permanent records storage.

Paragraph (b)(1)(vii) would require states to maintain a tracking system sufficient to allow an audit of compliance with the requirements of this subpart. States would be free to specify the details for this disclosure tracking system. Tracking by states is necessary to ensure that recipients of disclosed information are complying with the required safeguards. This responsibility may not be handed over to the recipient. Where recipients would be required to pay for the costs of

making a disclosure, the costs of tracking should be reflected in the amount charged to the recipient. As a result, tracking, like other provisions in this proposed rule, should not increase costs for state UC agencies.

Paragraph (b)(2) would specifically require the state to conduct, in the case of optional disclosures to entities on the basis of informed consent (§ 603.5(d)(2)), a periodic audit of sample transactions to assure that the entity receiving information has on file a written release authorizing each access. The audit would be required to ensure that the information is not being used for any unauthorized purpose. This provision would also require that all employees of entities receiving access to information pursuant to § 603.5(d)(2) be subject to the same confidentiality requirements, and state criminal penalties for violation of those requirements, as are employees of the state UC agency.

The safeguards in proposed paragraph (b) do not address specific or new technologies used in storing and sharing confidential UC information. Nevertheless, these safeguards would be applicable to disclosures of confidential UC information no matter what medium of storing and sharing the information is used. ETA encourages efficient use of technologies in storage, retention, and, where appropriate, sharing of information. Proposed paragraph (b) would not restrict the types of media that may be used to transmit confidential UC information as long as the safeguards are met.

Paragraph (c)(1) would permit a state or state UC agency to authorize any recipient of confidential information under paragraph (a) (which applies to disclosure to a public official, except as provided in paragraph (d) of this section, to an agent or contractor of a public official, and to any other entity on the basis of informed consent) to redisclose information only in eight situations. These are redisclosure:

- To the individual or employer who is the subject of the information (paragraph (c)(1)(i)).
- To attorney or other duly authorized agent representing the individual or employer (paragraph (c)(1)(ii)).
- In a civil or criminal proceedings for or on behalf of a recipient agency or entity (paragraph (c)(1)(iii)).
- As provided in § 603.7, in response to a subpoena (paragraph (c)(1)(iv)).
- To agents and contractors of public officials (paragraph (c)(1)(v)). Under this provision, the recipient public official would remain responsible for the uses

of the confidential UC information by the agent or contractor.

- By one public official to another public official (paragraph (c)(1)(vi)). This provision would take into account situations in which public officials in different agencies or in different states need to share confidential UC information with each other in the course of administering a public program.

- Of wage information from state and local child support enforcement agencies to agents under contract with such agencies for purposes of carrying out child support enforcement, consistent with Section 303(e)(5) of the SSA (paragraph (c)(1)(vii)) and state law. Though proposed paragraph (c)(1)(vii) covers only wage information, redisclosure of other confidential UC information between a state or local child support enforcement agency and its contractor or agent would be permitted by paragraph (c)(1)(v).

- By an entity that has obtained confidential UC information on the basis of informed consent, when authorized by the state and by a written release from the individual or employer to whom the information pertains that meets the requirements of proposed § 603.5(d)(2) (paragraph (c)(1)(viii)).

The redisclosure provisions would allow sharing of confidential UC information by a public official to an individual administering the WIA who is not a public official if the individual is an agent or contractor of a public official, or on the basis of informed consent.

Paragraph (c)(2) would require that information redisclosed under paragraphs (c)(1)(v) and (vi) be subject to the safeguards in paragraph (b).

Paragraph (d) would provide that the safeguards in this section, including the limitations on redisclosure, do not apply to disclosures of UC information to a Federal agency where the Department has published a notice in the **Federal Register** that the Federal agency has appropriate safeguards, and limitations on redisclosure, to protect the confidentiality of the disclosed information consistent with Section 303(a)(1), SSA. The reason for this exception is to avoid unnecessary duplication of requirements, or the creation of inconsistent requirements, concerning safeguards and restrictions on redisclosure, for Federal agencies that already follow strong safeguards for protecting the confidentiality of information. This exception is limited to Federal agencies because the Department, through its regular contacts with such agencies, is in a position to easily determine whether the applicable

Federal laws and regulations provide safeguards and limitations consistent with Section 303(a)(1), SSA. Two disclosures for which the Department has already determined that a Federal agency has in place adequate alternative safeguards include disclosures to the Internal Revenue Service (IRS) for purposes of administering the Health Coverage Tax Credit (HCTC), and disclosures of wage and claim information to HHS for purposes of the National Directory of New Hires.

The HCTC, established by the Trade Act of 2002 (Pub. L. 107-210), is a partial Federal tax credit toward the purchase of qualified health insurance for eligible individuals and their families. Eligible individuals include workers covered by the TAA program who are either receiving Trade Readjustment Allowances (TRA) or who would be eligible for TRA but for not having exhausted UC and eligible participants in the ATAA program. The IRS, which administers the HCTC, needs information from state workforce agencies (SWAs) about who is eligible for TRA, or would be but for not having exhausted UC, as well as information about who is participating in the ATAA program, to determine eligibility for the tax credit. UC information needed by the IRS would fall within the protection of this rule, and TAA and ATAA information would be subject under state law to the same confidentiality protections as contained in this rule.

However, Section 6103 of the Internal Revenue Code and IRS regulations on the confidentiality of tax return information (26 CFR 301.6103(a)-1 *et seq.*) are sufficient to protect the confidentiality of this information consistent with Section 303(a)(1), SSA. (Once this information about ATAA, TRA, and UC eligibility is submitted to the IRS or its agents, it becomes protected tax return information.) Requiring the IRS to follow the requirements of this regulation in addition to Section 6103 and IRS regulatory requirements would be unnecessarily burdensome and may create conflicting obligations for that agency. Accordingly, the requirements of § 603.9 of this rule, concerning safeguards, do not apply to disclosures to the IRS for purposes of administering the HCTC. The Department has determined that the IRS has appropriate alternative safeguards, and limitations on redisclosure, to protect the confidentiality of the disclosed information consistent with Section 303(a)(1), SSA.

Similarly, wage and claim information disclosed to HHS for purposes of the National Directory of

New Hires is protected by a “security plan” of HHS which the Department of Labor has determined provides safeguards adequate to meet the requirement of Section 303(a)(1) to maintain confidentiality. Further, laws governing information in the National Directory of New Hires impose strict controls on redisclosure and disposal of that information. *See, e.g.*, 42 U.S.C. 653(i), (j), (l), and (m). Accordingly, the requirements of § 603.9 of this rule, concerning safeguards, do not apply to disclosures to the HHS for purposes of the National Directory of New Hires. The Department has determined that HHS has appropriate alternative safeguards, and limitations on redisclosure, to protect the confidentiality of the disclosed information consistent with Section 303(a)(1), SSA.

Section 603.10, Agreements

This section sets out the proposed requirements concerning data-sharing agreements with parties obtaining confidential UC information. The required terms and conditions are similar to those contained in the existing part 603 but have been simplified to provide state flexibility.

Paragraph (a)(1) would require a state or state UC agency to enter into a written, enforceable agreement with any agency or entity requesting disclosure of UC information under proposed § 603.5(d)(2) (disclosure to a third party on the basis of informed consent); (e) (disclosure of information to a public official), except as provided in paragraph (d) of this section; (f) (disclosure to an agent or contractor of a public official); § 603.6(b)(1) through (4); (6); and (7)(i) (where disclosure is required by Federal UC law, except to HHS under Sections 303(h), SSA, and 3304(a)(16)(B), FUTA); and § 603.22 (to a requesting agency for purposes of an IEVS).

Paragraph (a)(2) requires, for disclosure to an agent or contractor of a public official, that the state or state UC agency enter into a written, enforceable agreement (whether on paper or electronic) with the public official on whose behalf of the agent or contractor will obtain information, which requires the public official to ensure that the agent or contractor complies with the safeguards of § 603.9. The purpose of this provision would be to have the public official with responsibility for the public purpose that is being carried out by the use of the disclosed information, assume responsibility for safeguarding the confidentiality of the data.

Paragraph (b)(1) sets out the terms and conditions that would be required to be included in all agreements, and also provides that the terms and conditions of any agreement need not be limited to those specifically required. Required to be included would be:

- A description of the specific information to be furnished and the purposes for which the information is sought;
- 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;
- The methods and timing of requests for information, including the format to be used;
- Provision for paying the state or state UC agency for any costs of furnishing information, as required by § 603.8 (on costs);
- Provision for safeguarding the information disclosed, as required by § 603.9 (on safeguards); and
- Provision for on-site inspections of the agency, entity, or contractor to assure that the requirements of the state's law and the agreement or contract are being met.

Paragraph (b)(2) would require that, for disclosures under § 603.5(d)(2) (to a third party on the basis of informed consent), 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. This safeguard is included in UIPL 23-96 (Disclosure of Confidential Employment Information to Private Entities), which will be superseded by a final rule.

A single, comprehensive agreement would satisfy the requirement for an agreement in cases where repeated disclosures to the same entity occur.

Paragraph (c) discusses enforcement and breach of agreements.

Paragraph (c)(1) would prescribe the steps to be taken in case of any breach of an agreement, including failure to timely pay for the costs of any disclosure. First, the agreement would have to be suspended, and any further disclosure would have to be prohibited, until the state or state UC agency is satisfied that corrective action has been taken and that no further breach of the agreement will occur. Second, in the absence of prompt and satisfactory corrective action, the agreement would have to be cancelled, and the party would have to surrender all information obtained under the agreement and any

other information relevant to the agreement.

It is necessary to the integrity of the confidentiality requirement that any breach of an agreement, whatever its importance may seem in the abstract, be promptly addressed and corrected, and, in the absence of prompt and satisfactory correction, that the agreement be cancelled and the state or state UC agency retrieve and secure all disclosed information.

Paragraph (c)(2) would require that the state and state UC agency utilize all available legal enforcement tools. Thus, in addition to the actions required to be taken in accordance with paragraph (c)(1), the state or state UC agency would be required to 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 information. Other remedial actions the state would be required to undertake include seeking damages, penalties, and restitution for any charges to granted funds, and recompense for all costs incurred by the state or state UC agency in pursuing legal action for the breach of the agreement and enforcement as required by paragraph (c).

Paragraph (d) would except from the requirements of this section, concerning agreements and their enforcement, disclosures of UC information to a Federal agency that the Department has determined to have in place adequate safeguards to satisfy Section 303(a)(1), SSA's requirement of maintaining confidentiality, and to have an appropriate method of paying or reimbursing the state UC agency (which may involve a reciprocal cost arrangement) for costs involved in such disclosures. For the reasons described in the discussion of § 603.9(d) (concerning safeguards), the Department has determined or will determine that in certain cases Federal agencies already have in place safeguards adequate to satisfy confidentiality concerns.

The Department believes that for these disclosures, when the relevant Federal agency also has in place a method determined adequate by the Department of Labor to reimburse state UC agencies for the costs associated with disclosure, the state UC agencies should be excepted from the requirement to enter into written agreements. The reasons are several. First, the safeguards that govern information disclosed to Federal agencies are already codified in statute, regulation, or the Federal agency's written operating policies and procedures, so there is no need to

memorialize them by agreement. Further, most disclosures to Federal agencies are documented in the sense that they are either explicitly or implicitly required by statute or are the subject of a memorandum of understanding between the Department of Labor and the recipient Federal agency. Finally, for Federal agencies that already have a method in place that is determined adequate by the Department of Labor to reimburse state UC agencies for the costs associated with disclosure, there is no need to negotiate cost reimbursement by agreement.

Two agencies that the Department has determined to already have in place appropriate alternative safeguards (as indicated in the discussion of § 603.9, safeguards) and to have appropriate methods in place to reimburse state UC agencies for costs associated with disclosure are the IRS, for purposes of administering the HCTC, and HHS, for purposes of the National Directory of New Hires. Thus, the requirements of this section, concerning agreements and their enforcement, do not apply to the IRS, for purposes of administering the HCTC, or to HHS, for purposes of the National Directory of New Hires.

Section 603.11, Notification of Claimants and Employers

This section would require state UC agencies to notify claimants and employers how confidential UC information about them may be requested and utilized. This section is derived from present § 603.4 but, unlike the present § 603.4, would be applicable to employers as well as claimants. State privacy law may require more detailed notification.

Section 603.4 of the present part 603 implements the notification requirement applicable to the IEVS of Section 1137(a)(6) of the SSA. This section restates the notification requirement of Section 1137(a)(6), SSA, as a general requirement of Section 303(a)(1) of the SSA. Notifying claimants and employers what use may be made of UC information is necessary to maintaining their confidence in the federal-state UC system, which is critical to its proper and efficient administration.

Section 603.12, Enforcement

For a state to receive Federal grants to fund UC administration, and for employers in the state to receive credit against the Federal unemployment tax, state law must conform and its practices must substantially comply with the requirements of Federal UC law. Conformity means that a state's law contains provisions required by Federal

UC law, and that those provisions are interpreted consistently with Federal UC law. Substantial compliance means that a state's administration of its law is substantially consistent with Federal UC law.

This section sets forth how the Department of Labor would determine and enforce conformity and substantial compliance with the confidentiality and disclosure requirements of Title III of the SSA and Section 3304(a)(16), FUTA, as provided in subparts B and C of this regulation. The procedures in 20 CFR 601.5 would apply, meaning that if any issue involving conformity and substantial compliance arose, the Department would generally first hold informal discussions with state officials. Should informal discussions fail to resolve the issue, the Department would offer the state UC agency an opportunity for a hearing. If the Secretary of Labor were to find, after reasonable notice and opportunity for a hearing, a failure to conform or substantially comply with the confidentiality and disclosure requirements of Title III, SSA, as provided in subparts B and C, the Secretary would notify the Governor of the state that grants to fund state administration of the UC program would be withheld. For failure to conform or substantially comply with the disclosure requirements of Section 3304(a)(16), FUTA, as provided in subpart B, the Secretary would make no certification under FUTA to the Secretary of the Treasury that employers in the state are eligible to receive credit against the Federal unemployment tax.

All the confidentiality and disclosure requirements set forth in this proposed regulation are intended to be both conformity and substantial compliance requirements, even though some of the disclosure provisions in Title III, SSA, mention only substantial compliance and do not explicitly require that they be provided for in state law (the definition of a conformity requirement). However, since only state law can compel the state UC agency to hold information confidential or to disclose information, a conformity mandate is inherent in these provisions. Additionally, since these provisions are exceptions to Section 303(a)(1), SSA's confidentiality requirement, which is itself a conformity requirement, conformity is implied, since an exception to state law is needed to permit or compel disclosure. We note that, as a practical matter, the effect of a state's nonconformity or lack of substantial compliance under Title III, SSA, is the same: loss to the state of Federal UC administrative grants.

Two provisions of Section 303, SSA, mention neither conformity nor substantial compliance (Sections 303(c) and 303(f)). Section 303(c) (requiring, among other things, disclosures to the Railroad Retirement Board) uses terminology of strict compliance, though we interpret it to require substantial compliance to be in keeping with our interpretation of the rest of the requirements in Title III, SSA. Section 303(f) (requiring disclosures for IEVS purposes) is completely silent on enforcement. However, that section would be a meaningless requirement if enforcement authority did not exist. Further, the structure of Title III, SSA, which gives the Secretary of Labor authority to distribute grant funds to states who meet the requirements of Title III, SSA, indicates that the Secretary of Labor has authority to implement and enforce its provisions.

Conformity and substantial compliance with proposed part 603 may require amendments to state law (including regulations) or to state UC agency policy or practice. Each state would need to review its law and data-sharing agreements to ensure that they conform and substantially comply with the confidentiality and disclosure requirements of Title III, SSA, and Section 3304(a)(16), FUTA, as provided in this proposed rule.

Subpart C—Income and Eligibility Verification System (IEVS)

Subpart C would implement Section 303(f) of the SSA. That section requires states to have an IEVS which meets the requirements of Section 1137 of the 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. Because the purpose of these regulations is limited to addressing confidentiality and disclosure of UC information by state government agencies, subpart C includes only those portions of the present part 603 IEVS regulations which address that subject. Consequently, subpart C merely notes, but does not implement, the requirement of Section 1137 SSA, and the present part 603 concerning claimant provision of Social Security account numbers and other requirements of Section 1137, SSA. Nevertheless, those requirements are statutory and states must still comply with them.

Section 303(f), SSA, is a mandatory disclosure requirement like the requirements addressed in § 603.6 of subpart B. In addition to requiring disclosure, however, Section 303(f)

requires state UC agencies to obtain information from other agencies. In order to clarify what information state UC agencies must obtain from other agencies and in what circumstances, this proposed rule addresses Section 303(f), the IEVS requirements, in a separate subpart. Enforcement of subpart C, however, would occur under § 603.12 of subpart B.

Section 603.20, Purpose and Scope

This section sets forth the purpose and scope of proposed subpart C. It also notes the statutory requirements (under Section 1137, SSA) that states have wage record systems and that claimants furnish statements regarding their Social Security account numbers (as discussed above), and, under the 1988 amendments to Section 1137, SSA, nationality or immigration status.

This subpart applies only to state UC agencies, as they, not states, are required to disclose information referred to in subpart C.

Section 603.21, Definition

This section defines “requesting agency,” in accordance with Section 1137 SSA, to mean an agency that administers Temporary Assistance to Needy Families, Medicaid, Food Stamps, or other SSA programs under Titles I, II, X, XIV, or XVI, SSA.

Section 603.22, Disclosure of Information

This section sets forth the basic requirement of the subpart that each state UC agency must disclose wage and claim information to requesting agencies and that the state UC agency must adhere to standardized formats established by the Secretary of HHS and defined in 42 CFR 435.960. This section would require state UC agencies to disclose only wage and claim information contained in the agency’s UC records.

Section 603.23, Crossmatch of Wage and Benefit Information

This section would require that states UC agencies obtain information from the Social Security Administration and any requesting agency that is needed in verifying eligibility for, and the amount of, compensation payable under the state UC law. It would also require state UC agencies to crossmatch quarterly wage information with UC payment information to the extent 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.

Executive Order 12866

This proposed rule is a “significant regulatory action” within the meaning of Executive Order 12866 because it meets the criteria of Section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, the proposed rule has been submitted to, and reviewed by, the Office of Management and Budget (OMB).

However, the proposed rule is not “economically significant” because it would not have an annual effect on the economy of \$100 million or more. We have also determined that the proposed rule would have no adverse material impact upon the economy and that it would not materially alter the budgeting impact of entitlement, grants, user fees or loan programs, or the rights and obligations of recipients thereof.

Further, we have evaluated the proposed rule and found it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. Although the proposed rule would impact states and state UC agencies, it would not adversely affect them in a material way. The proposed rule would protect state UC agencies from becoming clearinghouses of confidential UC information and preserve UC grant funds for program purposes. In addition, the proposed rule would maintain state flexibility in deciding whether to permit certain disclosures of confidential UC information for purposes other than the administration of the UC program so long as certain safeguards are followed.

Executive Order 13132

We have reviewed this proposed rule in accordance with Executive Order 13132 and have determined that it may have federalism implications. We intend to consult with organizations representing state elected officials about this rule in the upcoming weeks. We held a previous federalism consultation with organizations representing state elected officials at the Department of Labor on October 19, 2000, during an earlier stage in this rulemaking process. These organizations expressed no concerns at that time, or in the following months. However, we invite these organizations and states to submit comments on this proposed rule. Twenty-five states submitted comments on the 1992 proposed regulation. We believe this proposed rule addresses the concerns expressed in those comments.

Executive Order 12988

We drafted and reviewed this proposed regulation in accordance with Executive Order 12988, Civil Justice Reform, and it would not unduly burden the Federal court system. The proposed rule was written to minimize litigation and provide a clear legal standard for affected conduct, and was reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

This proposed rule was reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. We have determined that this proposed 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, we have not prepared a budgetary impact statement.

Paperwork Reduction Act

The following sections of this proposed rule contain information collection requirements or would revise information collection requirements in current 20 CFR part 603: §§ 603.5, 603.6, 603.7, 603.8, 603.9, 603.10, 603.11, 603.22, and 603.23. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements in this proposed rule to the OMB for approval under OMB control number 1205-0238.

The annual burden associated with this proposed rule for all states combined is estimated at approximately 25,810 hours.

We invite public comment on all of the information collection requirements in this proposed rule. These comments should be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of Labor, Employment and Training Administration, 725 17th Street, NW., Room 10235, Washington, DC 20503.

Regulatory Flexibility Act

This proposed rule would not have a "significant economic impact on a substantial number of small entities." The proposed rule affects states and state agencies, which are not within the definition of "small entity" under 5 U.S.C. 601(6). Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

Accordingly, no regulatory flexibility analysis is required.

Congressional Review Act

This proposed rule is not a "major rule" as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule would not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Effect on Family Life

We certify that this proposed rule was assessed in accordance with Public Law 105-277, 112 Stat. 2681, and that the proposed rule would not adversely affect the well-being of the nation's families.

List of Subjects in 20 CFR Part 603

Employment and Training Administration, Labor, Unemployment Compensation.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

Signed in Washington, DC on August 5, 2004.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

Words of Issuance

For the reasons set forth in the preamble, part 603 of Title 20, Code of Federal Regulations is proposed to be revised as set forth below:

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

Sec.

Subpart A—In General

603.1 What is the purpose and scope of this part?

603.2 What definitions apply to this part?

Subpart B—Confidentiality and Disclosure Requirements

603.3 What is the purpose and scope of this subpart?

603.4 What is the confidentiality requirement of Federal UC law?

603.5 What are the exceptions to the confidentiality requirement?

603.6 What disclosures are required by Federal UC law?

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

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

603.9 What safeguards and security requirements apply to disclosed information?

603.10 What are the requirements for agreements?

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

603.12 How are the requirements of this subpart enforced?

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

603.20 What is the purpose and scope of this subpart?

603.21 What definitions apply to this subpart?

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

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

Authority: 42 U.S.C. 1302(a); Secretary's Order No. 4-75 (40 FR 18515) and Secretary's Order No. 14-75 (November 12, 1975).

Subpart A—In General**§ 603.1 What is 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, appeals records and decisions, and precedential determinations on coverage of employers, employment, and wages; 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 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 a legislator in the Federal, state, or local government with oversight responsibility for the UC program.

(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 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 Income and Eligibility Verification System (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 personnel 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 of the 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.

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), Social Security Act (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).

§ 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 “(s)uch 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 at 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 is permissible under exceptions at 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 is permissible under exceptions at 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) *Administration of the UC program.* The confidentiality requirement of § 603.4 does not apply when disclosure is necessary for the proper administration of the UC program.

(c) *Individual or employer.* Disclosure of UC information about an individual to that individual, or of UC information about an employer disclosed to that employer is permissible.

(d) *Informed consent.* Disclosure of UC information on the basis of informed consent is permissible in the following circumstances—

(1) Agent or attorney—to an agent or attorney of an individual, of information that pertains to that individual, or to an agent or attorney of an employer, of information that pertains to that employer, if—

(i) The agent or attorney presents a written release from the individual or employer being represented, or

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

(2) *Third party*—to a third party 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 released.

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

(A) Providing a service or benefit to the individual signing the release that 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)(2): The Electronic Signatures in Global and National Commerce Act of 2000 (E-Sign), Public Law 106-229, may apply where a party wishes to effectuate electronically an informed consent release (paragraph(d)(2) of this section) 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 part, 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 UC information to a public official for use in the performance of his or her official duties is permissible. "Performance of official duties" means administration or enforcement of law, or, in the case of a state or Federal legislative branch, oversight of UC law.

(f) *Agent or contractor of public official.* Disclosure of 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 UC information

in response to a court order or to an official with subpoena authority is permissible as specified in § 603.7(b).

(i) *As required by Federal law.* Disclosure as required by Federal law is permissible.

§ 603.6 What disclosures are required by Federal UC law?

(a) The Department of Labor interprets Section 303(a)(1) of the SSA as requiring disclosure of all information necessary for the proper administration of the UC program.

(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 UCFE, UCX, TAA (except for confidential business information collected by states), 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), Federal Unemployment Tax Act (FUTA) requires each state UC agency—

- (i) To disclose, upon request, to any state or political subdivision thereof administering a 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.

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

§ 603.7 What requirements apply to subpoenas, other compulsory process, 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. Only if such motion is denied by the court or other forum may the requested confidential 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

(2) *Public Official with Subpoena Authority*—UC information has been requested, with or without a subpoena, by a state or Federal government 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.

§ 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. Grant funds may not be used to pay any of the costs of making any disclosures under § 603.5(e) (optional disclosure to a public official), § 603.5(f) (optional disclosure to an agent or contractor of a public official), § 603.5(g) (optional disclosure to BLS), or § 603.5(h) (disclosure to the IRS for HCTC purposes), § 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) of the 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), or § 603.5(d) (on the basis of informed consent)). In addition, grant funds may be used to pay costs associated with a request for 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. Finally, grant funds may 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.

(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 information, calculated in accordance with paragraph (c) of this section, must be paid by and collected from the recipient of the information either in advance or by way of reimbursement. If the recipient is not a public official, such costs, except for good reason (such as when the disclosure involves minimal cost) must be paid and collected 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 information under this part, are program 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 on the basis of informed consent); § 603.5(e) (to a public official), except as provided in paragraph (d) of this section; and § 603.5(f) (to an agent or contractor of a public official); or, § 603.6(b)(1) through (4), (6), and (7)(i) (as required by Federal UC law, except for disclosures to HHS under Sections 303(h), SSA, and 3304(a)(16)(B), FUTA); or § 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 redisclosure, 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 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 tracking 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) (disclosure of confidential information to a third party on the basis of informed consent), 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 (which applies to optional disclosures to public officials, to agents or contractors of a public official, and to other entities on the basis of informed consent) 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) of the 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) (permitting optional disclosure to other entities on the basis of 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 any disclosure of confidential information under § 603.5(d)(2) (to a third party on the basis of informed consent); § 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, except to HHS under Sections 303(h), SSA, and 3304(a)(16)(B), FUTA); 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 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 on the basis of informed consent), 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 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, in what situations confidential UC information pertaining to the claimant may be requested and utilized. 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 in what situations wage information and other confidential information about the employer may be requested and utilized.

§ 603.12 How are the requirements of this subpart 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 paragraphs (b) (informal discussions with the Department of Labor to resolve conformity and substantial compliance issues), and (d) (Secretary of Labor's hearing and decision on conformity and substantial compliance) of 20 CFR 601.5 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, 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) of the SSA. Section 303(f) requires states to have in effect an income and eligibility verification system, which meets the requirements of Section 1137 of the 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 § 603.20:** Although not implemented in this part, Section 1137(a)(1) of the 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) of the 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) of the 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) of the SSA not implemented in this part 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 (formerly the Immigration and Naturalization Service).

§ 603.21 What definitions apply to this subpart?

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) HHS—The Secretary of HHS 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 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.

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