Maryland
Massachusetts
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Montana
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Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
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Virgin Islands
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Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 1997.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 97–29371 Filed 11–5–97; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPLs described below are published in the **Federal Register** in order to inform the public.

UIPL 41–97

UIPL 40–79, dated August 3, 1979, set forth the Department of Labor's position on whether Head Start agencies are ''educational institutions'' for purposes of the ''between and within terms denial'' provisions of Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). This section of FUTA has been amended since that time. As such, questions have been raised as to whether the treatment of Head Start services has changed as a result of the amendments. UIPL 41–97 reiterates the Department's position regarding Head Start agencies and provides specific discussion of the application of the between and within terms denial to Head Start program personnel.

UIPL 44–97

The Balanced Budget Act of 1997 (BBA) and the Taxpayer Relief Act of 1997 (TPRA), both enacted on August 6, 1997, made several changes affecting the UC program. UIPL 44–97 provides information on the amendments made by the BBA and the TPRA. This UIPL also discusses whether States are required to amend their UC laws regarding disclosure of UC information, Reed Act transfers, and levy on payments of UC as a result of the amendments to these Acts.

Dated: October 31, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

U.S. Department of Labor, Employment and Training Administration, Washington, D.C. 20210
Classification: UI
Correspondence Symbol: TEUL
Date: 09/30/97
Rescissions: None
Expiration Date: Continuing
Directive: Unemployment Insurance Program Letter No. 41–97
To: All State Employment Security Agencies
From: Grace A. Kilbane, Director, Unemployment Insurance Service
Subject: Application of Between and Within Terms Denial to Head Start Program Personnel

1. *Purpose.* To clarify the application of the between and within terms denial provisions of Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) to Head Start program personnel.

2. *References.* Section 3304(a)(6)(A), FUTA; P.L. 94–566; P.L. 95–19, *Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976—P.L. 94–566* and Supplement 4, *1976 Draft Legislation*, dated August 26, 1977; Unemployment Insurance Program Letter (UIPL) No. 40–79, dated August 3, 1979; UIPL No. 41–83, dated September 13, 1983; UIPL No. 30–85, dated July 12, 1985; UIPL No. 15–92, dated January 27, 1992; and UIPL No. 43–93, dated September 13, 1993.

3. *Background.* UIPL No. 40–79 set forth the Department's position on whether Head Start agencies are ''educational institutions'' for purposes of the ''between and within terms denial'' provisions required and/or allowed by Section 3304(a)(6)(A), FUTA. Subsequent amendments to the ''between and within terms denial'' provisions have raised questions about whether the treatment of Head Start services has changed. This UIPL reiterates the Department's position and provides specific discussion of the amendments made following the issuance of UIPL 40–79.

4. *Discussion.* Section 3304(a)(6)(A), FUTA, requires, as a condition for employers in a State to receive credit against the Federal unemployment tax, that the State law provide that unemployment compensation (UC) be payable based on services to which Section 3309(a)(1), FUTA, applies, in the same amount, on the same terms, and subject to the same conditions as UC payable on the basis of other service subject to State law. The major mandates of this Section are: (1) coverage of services performed for State and local governments and their instrumentalities and nonprofit organizations as defined under Section 3309(a)(1), FUTA; (2) equal treatment in the payment of UC to employees of such entities; and (3) denial of UC based on certain educational services performed for such entities between and within academic terms. These conditions are required for employers in a State to receive credit against the Federal unemployment tax. UIPL No. 43–93 describes the optional and required denial provisions in clauses (i) through (vi) of Section 3304(a)(6)(A), FUTA. The six clauses are described below:

- Clause (i) requires, unless the specified conditions are met, the denial between two successive academic years or terms based on instructional, research, and principal administrative services performed for an educational institution.
- Clause (ii) permits, under specified conditions, the between years or terms denial based on all other (i.e., ''nonprofessional'') services performed for an educational institution, and retroactive payment based on those services, if no work is available in the second term, and the individuals have otherwise met the eligibility requirements.
- Clause (iii) requires the within terms denial of benefits during an established and customary vacation period or holiday recess based on all services performed for an educational institution.
- Clause (iv) requires the between and within terms denial of benefits based on all services performed in an educational institution while in the employ of an educational service agency (ESA).
- Clause (v) permits the State to implement the denial provisions of (i) through (iv) for services performed by governmental entities or nonprofit organizations if such services are provided to or on behalf of an educational institution.
- Clause (vi) permits the State to make the between and within terms denial provisions of clauses (iii) and (iv) optional based on the ''nonprofessional'' services described in clause (ii).

5. *Interpretation and Application.* The between and within terms denial provisions apply only to services performed (1) for an educational institution, (2) in an educational

institution while employed by an ESA, or (3) to or on behalf of an educational institution by a governmental entity or nonprofit organization.

Whether Head Start Agencies are Educational Institutions under Clauses (i) and (ii) of Section 3304(a)(6)(A), FUTA. Head Start programs are comprehensive developmental programs designed to meet children's needs in the health (medical, dental, mental, nutritional), social, and education areas. The goal is child adjustment and development at the emotional and social levels, rather than school-type training.

Whether Head Start agencies are ''educational institutions'' was discussed in UIPL 40–79. That UIPL stated that Head Start programs operated by Community Action Groups do not meet the criteria of ''educational institutions,'' and the between and within terms denial does not, therefore, apply to services performed for such groups. UIPL 40–79 stated, however, that when a local board of education operates a Head Start program as an integral part of the school system in facilities of an educational institution, with Head Start workers as employees of the board and the schools in every respect, subject to all employing policies, such as hiring, firing, working conditions, as other employees performing services for the educational institution, then such workers are considered to be employed by an educational institution. As such, these workers are subject to the denial provisions in the same manner as are all other educational institution employees. This remains the Department's position.

Application of Clauses (iv) and (v), Section 3304(a)(6)(A), FUTA to Head Start Services. UIPL 40–79 did not address clauses (iv) and (v), as these provisions were not added until 1983. UIPL 41–83 advised the States of the addition of these clauses to Federal law, but did not discuss Head Start agencies.

Clause (iv) applies to services performed for an ESA. Clause (iv) defines an ESA as ''a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.'' Since Head Start agencies do not exist exclusively for the purpose of providing services to educational institutions, they are not ESAs.

Clause (v) permits States to apply the between and within terms denial to services ''provided to or on behalf of'' an educational institution by a governmental entity or nonprofit organization to which Section 3309(a)(1), FUTA, applies. UIPL 41–83 states that the words ''provided to'' require only that the services provided to the educational institution give some benefit or support to the institution. The words ''on behalf of'' are more restrictive. They apply—

to those employees of a governmental entity or nonprofit organization who perform services as an agent of or on the part of an educational institution. This situation could arise, therefore, only where an employee of a governmental entity or nonprofit organization performed services as an agent of or on the part of an educational institution in such a representative capacity.

Whether services are ''provided to or performed on behalf'' of an educational institution depends on the facts present in each individual case. Thus, if State law contains a provision implementing optional clause (v), a case-by-case determination must be made to determine if Head Start services are ''provided to or on behalf of an educational institution,'' assuming that the Head Start agency is a governmental entity or nonprofit organization to which Section 3309(a)(1), FUTA, applies.

If a State law implements optional clause (v), the application to Head Start programs may be limited as to scope and/or time by a State, but, as discussed in UIPL 43–93, the limitation must be uniformly applied throughout the State. A State may not treat Head Start services ''provided to or on behalf of'' one school district differently from Head Start services ''provided to or on behalf of'' those performed for another school district. Also, a State may not treat the services performed for a governmental entity differently from services performed for a nonprofit organization.

6. *Action Required.* Administrators are to provide this information to appropriate staff.

7. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

U.S. Department of Labor, Employment and Training Administration, Washington, D.C. 20210
Classification: UI
Correspondence School: TEUL
Date: October 9, 1997
Rescissions: None
Expiration Date: Continuing
Directive: Unemployment Insurance Program Letter No. 44–97
To: All State Employment Security Agencies
From: Grace A. Kilbane, Director, Unemployment Insurance Service
Subject: The Balanced Budget Act of 1997 and the Taxpayer Relief Act of 1997

1. *Purpose.* To advise the States of amendments made to Federal law by the Balanced Budget Act of 1997 and the Taxpayer Relief Act of 1997 affecting the Federal-State Unemployment Compensation (UC) program.

2. *References.* The Balanced Budget Act of 1997 (BBA), P.L. 105–33; the Taxpayer Relief Act of 1997 (TPRA), P.L. 105–34; the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104–193; the Internal Revenue Code of 1986 (IRC), including the Federal Unemployment Tax Act (FUTA); the Social Security Act (SSA); and Unemployment Insurance Program Letters (UIPLs) Nos. 28–87, 45–89, 12–91, 11–92 and 37–96.

3. *Background.* The BBA and the TPRA, both enacted on August 6, 1997, made several changes affecting the UC program. This UIPL provides information on eleven amendments made by the BBA and four amendments made by the TPRA. The amendment discussed in item 4.a., related to disclosure of UC information, may require States to amend their laws to meet Federal UC law requirements. In addition, States will need to amend their laws to implement the special Reed Act transfers discussed in item 6.b. Finally, States will need to determine whether they need to amend their laws to permit the continuous levy discussed in item 12.

4. *Sections 5201 and 5533, BBA: National Directory of New Hires (''National Directory'').*

a. *Section 5201, BBA, Disclosure to National Directory.* Section 303(h)(1), SSA, as amended by the PRWORA, requires States, as a condition of receiving UC administrative grants, to disclose wage and claim information to the Secretary of Health and Human Services for purposes of the National Directory. Section 303(h)(1)(C), as amended by the PRWORA, also required States to establish such safeguards as the Secretary of Labor determines are necessary to insure that such information is used ''only for purposes of *section 453(i)(1) [SSA] in carrying out the child support enforcement program under title IV*'' of the SSA. (Emphasis added.) The BBA deleted the underscored language and substituted ''subsections (i)(1), (i)(3) and (j) of section 453.'' This amendment makes clear that States must authorize the disclosure of UC information to the National Director for:

- Use by programs funded under the Transitional Assistance to Needy Families program, the child support enforcement program, and any ''other purposes'' specified in Section 453. (Section 453(i)(1), SSA.) The ''other purposes'' are specified in Section 453(i)(3) and (j), SSA, described below.
- Use in the administration of the earned income tax credit by the Internal Revenue Service (IRS). (Section 453(i)(3), SSA.)
- Verification of information in the National Directory by the Social Security Administration; comparisons with the Federal Case Registry of Child Support Orders and other child support enforcement purposes; use by the Social Security Administration; and research related to Transitional Assistance to Needy Families or child support enforcement. In the case of research, personal identifiers may not be used. (Section 453(j), SSA.)

As no effective date is provided, this amendment is effective as of the date of enactment of the BBA. However, as discussed in UIPL 37–96, pages 6 and 7, the effective date of the disclosure requirements in Section 303(h), SSA, for UC conformity purposes is either October 1, 1997, or, if the State qualifies for a grace period, January 1, 1998.

States will need to review their UC laws and regulations to determine if their laws permit disclosure in view of the above requirement concerning redisclosures of information provided to the National Directory. Each State must take all actions necessary to ensure that it will make such disclosures by the effective date discussed in the previous paragraph.

b. *Section 5533, BBA: Technical Amendment.* Section 453A, SSA, requires each State to establish a Directory of New Hires. Section 453A(g)(2)(B), SSA, as added by PRWORA, specifically cited a provision of Federal UC law:

Wage and Unemployment Compensation Information.—The State Directory of New Hires shall, on a quarterly basis, furnish to the National Directory of New Hires *extracts of the reports required under section 303(a)(6) [SSA] to be made to the Secretary of Labor* concerning the wages and unemployment compensation paid to

individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations. [Emphasis added.]

Since the Secretary of Labor does not require the submittal of data on individuals under Section 303(a)(6), SSA, this provision created a technical problem. The BBA deleted the underscored language and substituted ''information.'' This amendment does not affect what information must be provided to the Secretary of Health and Human Services. Nor does it change the fact that both the FUTA and the SSA continue to require UC agencies to provide wage and claim information to the State directory. *See* UIPL 37–96.

5. *Section 5401, BBA: Base Periods and the Pennington Case.* In 1994 and 1997, the U.S. Court of Appeals for the Seventh Circuit issued two opinions in litigation commonly known as *Pennington.* 22 F.3d 1376 (7th Cir. 1994), 110 F.3d. 502 (7th Cir. 1997). In its 1994 decision, the Court decided that a State's base period was not an eligibility requirement, but instead was a ''method of administration'' under Section 303(a)(1), SSA, and, therefore, subject to Federal jurisdiction. In its 1997 decision, the Court ruled that Illinois' base period, consisting of the first four of the last five completed calendar quarters, was not consistent with the ''methods of administration'' requirement. This was because the existence of the lag period between the base period and benefit year meant some claimants had to wait for their recent wages to fall within the based period to qualify for UC. As a result of these decisions, States anticipated that they might be required to provide for alternative base periods to reduce the lag.

The BBA clarifies that the base period is not subject to the ''methods of administration'' requirement. Therefore, in the Department's view, this legislation frees States to determine their base periods without regard to the ''methods of administration'' requirement. Section 5401, BBA, provides as follows:

(a) In General. No provision of a State law under which the base period for such State is defined or otherwise determined shall, for purposes of section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)), be considered a provision for a method of administration.

(b) Definitions. For purposes of this section, the terms ''State law'', ''base period'', and ''State'' shall have the meanings given them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [EUCA] (26 U.S.C. 3304 note.)

(c) Effective Date. This section shall apply for purposes of any period beginning before, on, or after the date of the enactment of this Act.

''State law,'' as defined in Section 205(10), EUCA, ''means the unemployment compensation law of the State, approved by the Secretary under section 3304'' of the FUTA. ''Base period,'' as defined in Section 205(6), EUCA, ''means the base period as determined under applicable State law for the benefit year.'' ''State,'' as defined in Section 205(8), EUCA, includes the 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

This amendment does not require States to amend their laws.

6. *Sections 5402 and 5403, BBA: Increase in Federal Unemployment Account (FUA) Ceiling and Special Distribution to States from the Unemployment Trust Fund.* Section 903, SSA, provides that when, among other things, three accounts in the Unemployment Trust Fund reach their statutory limits, the excess amounts will be transferred to the States. These are called ''Reed Act'' distributions. The three accounts are the Employment Security Administration Account (ESAA), which pays for the administration of the UC and employment service programs; the Extended Unemployment Compensation Account, which pays for the Federal share of extended benefits; and the FUA, which provides for advances to States for the payment of UC.

a. *Section 5402, BBA: Increase in FUC Ceiling.* Prior to amendment, the balance in the FUA as of the end of any Federal fiscal year (September 30) could not exceed 0.25 percent of the total wages subject to contributions under all State UC laws. The BBA changes this maximum balance to 0.5 percent effective October 1, 2001.

b. *Sections 5403, BBA: Special Distribution to States from the Unemployment Trust Fund.* The BBA amended Section 903 of the SSA to cap the amount of Reed Act transfers made with respect to the Federal fiscal years ending in 1999, 2000 and 2001 at $100,000,000 per year. Each State's share of these transfers will be based on the ratio of the amount of ''funds to be allocated to such State for such fiscal year pursuant to the base allocation formula under title III'', SSA, to ''the total amount of funds to be allocated to all States for such fiscal year pursuant to the base allocation formula under title III.'' Any amounts in excess of the $100,000,000 which, but for the BBA amendments, would have been transferred to the States ''shall, as of the beginning of the succeeding fiscal year, accrue to the Federal unemployment account, without regard'' to its statutory limit.

Reed Act moneys transferred with respect to these fiscal years may be used ''only to pay expenses incurred by [the State] for the administration of its'' UC law. Unlike previous Reed Act transfers, States are prohibited from using the amounts transferred with respect to these three years for the payment of UC or the administration of State public employment offices. However, among other uses, States may, as in the past, use these Reed Act moneys for purchasing real property for UC purposes. These purchases could be amortized against UC grant funds consistent with the UC grant agreement.

Finally, the restrictions applicable to Reed Act transfers in Section 903(c)(2), SSA, are not applicable to the transfers made with respect to fiscal years 1999, 2000 and 2001. This means the amounts transferred to the States may be used without obtaining an appropriation from the State's legislative body.

State UC laws usually contain provisions addressing the use of Reed Act moneys transferred under Section 903, SSA. These laws usually mirror the requirements of Section 903(c)2), SSA, including a requirement that the moneys be used for the payment of UC unless appropriated by the legislative body. States must amend these provisions to prohibit the use of transfers made with respect to fiscal years 1999, 2000, and 2001 for the payment of UC. States may further amend these provisions to authorize use for administrative purposes without a specific appropriation from the State legislature. Nothing prohibits a State legislature from appropriating such money or from attaching conditions to the use of such money, provided the money is used for UC administration.

Draft language for State Reed Act provisions was provided in UIPL 12–91. We recommend that, using that language as a basis, States insert the following language in State law:

(4) Notwithstanding paragraph (1), money credited with respect to Federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program *and are not subject to appropriation by the legislature.* [Emphasis added.]

The underscored language is necessary only if the State chooses to avoid the appropriation process. As an alternative, a State could appropriate the moneys without subjecting them to the various restrictions found in Section 901(c)(3), SSA. (For example, under Section 901(c)(2), SSA, Reed Act moneys may be used only for expenses incurred after the date of enactment of the State appropriation.) In this case, the following language is recommended:

(4) Notwithstanding paragraph (1), money credited with respect to Federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program, and such money shall not otherwise be subject to the requirements of paragraph (1) when appropriated by the legislature.

c. *Reasons for Change.* The House Report describes the reason for increasing the FUA ceiling and providing for the special transfers:

The provision has two main effects: (1) raising the ceiling in the Federal Unemployment Account whole [sic] limiting Reed Act transfers allows for further buildup of funds pending a future recession requiring increased administrative resources; and (2) allowing $100 million in Reed Act transfers will assist States in the administration of their UI programs. (H. Rep. No. 105–149, 104th Cong. 1st Sess. 106 (1997).)

7. *Section 5404, BBA: Interest-Free Advances from the Unemployment Trust Fund.* Under Section 1202(b)(2), SSA, advances made from the FUA during a calendar year are interest free if the following conditions are met:

- The advance is repaid in full before the close of September 30 of the calendar year in which the advances were made, and
- Following this repayment, no other advance was made to the State during the calendar year.

The BBA adds a third condition to Section 1202(b)(2). States must now meet ''funding goals, established under regulations issued by the Secretary of Labor, relating to the

accounts of the States in the Unemployment Trust Fund.'' The amendment applies to calendar years beginning after the date of enactment of the BBA. The Department is commencing work on the required regulations.

According to the House Committee report, this amendment is intended to encourage solvency of State unemployment funds:

Should a State account become insolvent during an economic downturn, adverse conditions can result for the State and its employers. Borrowing Federal funds imposes a cost on the State at a time when it may face other financial difficulties. The State may react by raising taxes on its employers, thereby discouraging economic activity during a period when its economy is already in decline * * *. The provision would encourage States to maintain sufficient unemployment trust fund balances to cover the needs of unemployed workers in the event of a recession. (H. Rep. No. 105–149, 104th Cong. 1st Sess. 108 (1997).)

8. *Sections 5405 and 5407, BBA: Election Workers and Employees of Schools Operated Primarily for Religious Purposes.* Section 3304(a)(6)(A), FUTA, requires, as a condition for employers in a State to receive credit against the Federal unemployment tax, that UC be payable based on services performed for State and local governmental entities, their instrumentalities, and certain nonprofit organizations. The BBA amended FUTA to provide for two new exceptions to this required coverage.

Section 5405 of the BBA added new subparagraph (F) to Section 3309(b)(3), FUTA, to permit States to exclude services performed:

as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than $1,000.

Section 5407 of the BBA added new subparagraph (C) to Section 3309(b)(1) to permit States to exclude services performed for:

(C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a).

States were not previously permitted to exclude services performed for a religiously-oriented school from coverage where the school was not operated, supervised, controlled, or principally supported by a church or convention or association of churches. *See* UIPL 28–87. Since the new exclusion is limited to elementary and secondary schools, services performed by employees of other nonaffiliated religiously-oriented entities are still required to be covered. (For example, day-care centers, post-secondary schools or cemetery associations.) Both exclusions ''apply with respect to service performed after the date of the enactment of'' the BBA. With respect to election workers, this means that, if the individual earned less than $1,000 in calendar year 1997, the services are not required to be covered after August 6, 1997.

States are not required to exclude these services. The Department recommends that States choosing to do so follow the language in Federal law verbatim. However, the language following ''religious purposes'' in subparagraph (C) of Section 3309(b)(1) may be omitted if, as is commonly the case, State law provisions relating to coverage of nonprofit organizations are already limited to those organizations described in Section 501(c)(3), IRC, which are exempt from tax under Section 501(a), IRC.

9. *Section 5406, BBA: Coverage of Services Performed by Inmates.* The BBA added an exclusion to the definition of employment in Section 3306(c), FUTA, for:

(21) service performed by a person committed to a penal institution.

This exclusion applies only for purposes of the FUTA tax. However, as a result of this new exclusion, States may elect to amend their laws to exclude these services without the employers for whom the services are performed losing credit against the FUTA tax.

The effective date of this amendment applies ''with respect to service performed after January 1, 1994.'' Should State law be amended retroactively, amounts previously paid into the State's unemployment fund with respect to these services under the State law in effect at that time may not be refunded to employers. This prohibition is explained in UIPL 11–92.

10. *Section 5608, BBA: State Program Integrity Activities for Unemployment Compensation.* Section 901(c)(1)(A), SSA, authorizes appropriations from the ESAA for assisting States in the administration of their UC laws. (Henceforth, these amounts will be called the ''regular'' grant.) The BBA amended this section to create a special authorization for State program integrity activities. Specifically, a new paragraph was added to Section 901(c):

(5)(A) There are authorized to be appropriated out of the employment security administration account to carry out program integrity activities, in addition to any amounts available under paragraph (1)(A)(i)—

(i) $89,000,000 for fiscal year 1998;
(ii) $91,000,000 for fiscal year 1999;
(iii) $93,000,000 for fiscal year 2000;
(iv) $96,000,000 for fiscal year 2001; and
(v) $98,000,000 for fiscal year 2002.

(B) In any fiscal year in which a State receives funds appropriated pursuant to this paragraph, the State shall expend a proportion of the funds appropriated pursuant to paragraph (1)(A)(i) to carry out program integrity activities that is not less than the proportion of the funds appropriated under such paragraph that was expended by the State to carry out program integrity activities in fiscal year 1997.

(C) For purposes of this paragraph, the term ''program integrity activities'' means initial claims review activities, eligibility review activities, benefit payments control activities, and employer liability auditing activities.

This amendment merely authorizes amounts for appropriation for integrity purposes; Congress must still appropriate the amounts. If and when ''integrity'' moneys are received by the States, their use is limited to the integrity activities described in 901 (c)(5)(C), SSA.

Since Section 901(c)(5)(B), SSA, provides that the State must expend the same proportion of ''regular'' granted funds on integrity activities as was expended in fiscal year 1997, States may not use these integrity moneys to reduce integrity costs to the ''regular'' grant as determined by fiscal year 1997 expenditures.

11. *Section 221, TPRA: Employer-Provided Educational Assistance.* Section 3306(b)(13), FUTA, excludes from the definition of wages ''any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 * * *'' of the IRC. Section 127, IRC, excludes from gross income of the employee certain amounts paid, or expenses incurred, up to $5,250 in a calendar year, by the employer for educational assistance to the employee. Section 127 did not apply to taxable years beginning after May 31, 1997. In the case of tax year 1997, only expenses paid with respect to courses beginning before July 1, 1997, could be taken into account.

The TPRA extends this exclusion. It now applies to expenses paid with respect to courses beginning through May 31, 2000. The amendment applies to taxable years beginning after December 31, 1996. The IRS is responsible for administering this provision.

12. *Section 921, TPRA: Securities Brokers.* For purposes of determining whether an individual is an ''employee,'' Section 3306(i), FUTA, references Section 3121(d), IRC. That section provides that, among other things, an ''employee'' is ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee.''

The TPRA provides a clarification concerning the employment tax status of registered representatives of a securities broker-dealer. It provides that ''no weight shall be given to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency.'' The IRS is responsible for administering this provision.

The provision is effective for ''services performed after December 31, 1997.''

13. *Section 1024, TPRA: Continuous Levy on Payments of UC.* Federal UC law provides that payments of UC may not be subjected to levy. *See* UIPL 45–89. (A levy is the seizure of a person's property or rights to property to pay a debt.) Although the TPRA did not amend these UC provisions, it authorized the IRS to impose a continuous levy on certain payments, including UC, until the levy is released. This continuous levy may be imposed on any individual who is liable for an internal revenue tax and who does not pay such tax within 10 days of notice and demand by the IRS. Specifically, the TPRA added new subsection (h) to Section 6331, IRC—

(1) In General.—The effect of a levy on specified payments to or received by a taxpayer shall be continuous from the date

such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer.

(2) Specified Payment.—For the purposes of paragraph (1), the term ''specified payment'' means—

(A) any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,

(B) any payment described in paragraph (4) [pertaining to unemployment benefits], (7) [workers compensation], (9) [wages, salary and other income], or (11) [certain public assistance] of section 6334(a), and

(C) any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act.

Under new Section 6331(h)(2)(C), any payment described in paragraph (4) of Section 6334(a), IRC, may be continuously levied up to 15 percent. Paragraph (4) applies to any ''amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, or any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.'' Under this authority, the IRS may levy any payment under State or Federal UC law, including payments under the UC for Federal employees (UCFE), UC for Ex-servicemembers (UCX) and the Disaster Unemployment Assistance (DUA) programs as well as trade readjustment allowances (TRA) under the Trade Adjustment Assistance and NAFTA-Transitional Adjustment Assistance programs.

The IRS may continuously levy up to 15 percent of ''any specified payment.'' The amendment applies to levies issued after the August 6, 1997, date of the enactment of the TPRA.

The continuous levy is administered by the IRS. The IRS may implement the continuous levy through computer crossmatches with State UC agencies. The UC agencies will be responsible for deducting amounts levied from UC, UCFE, UCX, DUA, and TRA and for forwarding such amounts to the IRS. As the IRS does not pay for costs of levies, the Department is examining the funding implications for the UC system.

Since, in accordance with Federal UC law, all State laws currently prohibit the levy of UC, the Department recommends that States amend their laws to specifically authorize continuous levy in accordance with Section 6331, IRC. Alternatively, States may view Section 6331, IRC, as superseding State law.

14. *Section 1035, TPRA: Extension of Temporary Tax.* Section 3301, FUTA, imposes a tax of 6.2 percent on wages paid in employment by employers. This tax was to have dropped to 6.0 percent beginning in calendar year 1999.

Under the TPRA amendments, the 6.2 percent tax will remain in effect through calendar year 2007. The tax is now scheduled to drop to 6.0 percent beginning with calendar year 2008.

15 *Action.* Appropriate staff should be advised of these amendments.

16. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

[FR Doc. 97–29370 Filed 11–5–97; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

CORRECTION: As published on Oct. 28, 1997 (62 FR 55833) and on Nov. 4, 1997 (62 FR 59749), the agenda for the meeting scheduled for Nov. 15, 1997, is incorrect. The agenda is corrected as follows:

OPEN SESSION:

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of Sept. 20, 1997.
3. Approval of minutes of the Board's executive session meeting of Sept. 20, 1997.
4. Chairman's and Members' Reports.
5. President's Report.
6. Appointment of an ad hoc committee for annual performance evaluations of the President and Inspector General.
7. Consider and act on the report of the Board's Operations and Regulations Committee.
   a. Consideration of public comment and action on final revisions to 45 CFR Part 1630, Costs Standards and Procedures.
   b. Consideration of public comment and action on final rule 45 CFR Part 1643, Restriction on Assisted Suicide, Euthanasia and Mercy killing.
   c. Consider and act on proposed changes to the structure of the Corporation's management.
8. Consider and act on the report of the Board's Finance Committee.
9. Consider and act on the report of the Ad Hoc Committee on Performance Reviews of the President and Inspector General.
   a. Consider and act on procedural matters, including personal performance plans for the President and the Inspector General, written submissions prior to interviews, and interview protocols.
10. Consider and act on report on development of a strategic planning process.
11. Inspector General's Report.
12. Consider and act on proposed Report of the Board of Directors to accompany the Inspector General's Semi-annual Report to the Congress for the period of April 1, 1997–September 30, 1997.

CLOSED SESSION:

13. Briefing[1] by the Inspector General on the activities of the OIG.
14. Consider and act on an internal personnel issue relating to the Corporation's employee pension plan.
15. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

OPEN SESSION:

16. Consider and act on whether to change the date of the next annual meeting and, if so, to what date.
17. Public comment.
18. Consider and act on other business.

Dated: November 4, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–29488 Filed 11–4–97; 12:41 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 2, 1997, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on October 31, 1997 to the following applicants:

Brenda Hall & George Denton—Permit No. 98–014

Frederick W. Taylor, Sr.—Permit No. 98–015

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–29383 Filed 11–5–97; 8:45 am]

BILLING CODE 7555–01–M

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). *See* also 45 CFR § 1622.2 & 1622.3.