

protected in the decision for the Plan to acquire and hold the Rights in that such decision was made by the Board which was independent of management and Bancorp.

The accounts of Invested Participants in the Plan were protected against economic loss in that, if on November 15, 2010, the trading price of the Stock was not greater than \$0.20 per share, all Rights that such Invested Participants had elected to exercise would be immediately cancelled.

18. In summary, Bancorp represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The receipt by the Plan of the Rights occurred in connection with the Offering made available by Bancorp on the same terms to all shareholders of the Stock of Bancorp;

(b) The acquisition of the Rights by the Plan resulted from an independent act of Bancorp, as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition of such Rights;

(c) Each shareholder of the Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Stock of Bancorp held by such shareholder;

(d) The Board decided that the Offering should be made available to all shareholders of the Stock, including the Plan, as record owner of the Stock held in the Plan on behalf of the accounts of the Invested Participants, all or a portion of whose accounts in the Plan are invested in the Stock, in accordance with provisions under such Plan for individually-directed investment of such accounts;

(e) The decision to exercise the Rights or to refrain from exercising the Rights was made by each of the Invested Participants in accordance with the provision under the Plan for individually-directed accounts; and

(f) No brokerage fees, commissions, subscription fees, or any other charges were paid by the Plan with respect to the Offering, and no brokerage fees, commissions, or other monies were paid by the Plan to any broker in connection with the exercise of the Rights.

#### Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include current participants and beneficiaries, former participants and beneficiaries, who were participants and beneficiaries as of the Record Date, alternate payees, the Committee, the

Board, and the administrator, all trustees of the plan, and any other parties determined to be "interested persons."

It is represented that each of these classes of interested persons will be notified of the publication of the Notice by first class mail, within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment and to request a hearing.

All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

*For Further Information Contact:* Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative

exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of June, 2011.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### **Federal-State Extended Benefits Program—Methodology for Calculating “on” or “off” Total Unemployment Rate Indicators for Purposes of Determining When a State Begins and Ends an Extended Benefit Period**

**AGENCY:** Employment and Training  
Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** UIPL 16-11 informs states of the methodology used to calculate the “on” or “off” total unemployment rate (TUR) indicators to determine when extended benefit (EB) periods begin and end in a state. UIPL 16-11 is published below to inform the public and is available at: [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3027](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3027).

#### **SUPPLEMENTARY INFORMATION:**

#### **UIPL 16-11: Federal-State Extended Benefits Program—Methodology for Calculating “on” or “off” Total Unemployment Rate Indicators for Purposes of Determining When a State Begins and Ends an Extended Benefit Period**

1. *Purpose.* To inform states of the new methodology used to calculate the “on” or “off” total unemployment rate (TUR) indicators to determine when extended benefit (EB) periods begin and end in a state.

2. *References.* The Federal-State Extended Unemployment Compensation Act of 1970 (EUCA); Section 2005 of Division B, Title II, the Assistance for

Unemployed Workers and Struggling Families Act, Public Law (Pub. L.) 111–5; Section 502 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312; 26 U.S.C. 3304(a)(11) note; 20 CFR 615.12; Unemployment Insurance Program Letter (UIPL) No. 45–92; UIPL No. 4–10, Change 6.

3. *Background.* EB is payable in a state only during an EB period in the state, that is, a period of unusually high unemployment. Section 203, EUCA, provides methods for determining whether a state's current unemployment situation qualifies as an EB period. EB periods are determined by "on" and "off" indicators (commonly referred to as triggers) in the state. Section 203(d), EUCA, provides for an "on" indicator based on the insured unemployment rate (IUR). The IUR is calculated weekly by the states using administrative data on state unemployment compensation claims filed and the total population of employed individuals covered by unemployment insurance. States trigger "on" EB if the IUR for the most recent 13-week period equals or exceeds 5 percent and equals or exceeds 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years. The calculation of the relationship between the current rate and prior year's rates is commonly referred to as the "look-back."

The Unemployment Compensation Amendments of 1992, Pub. L. 102–318, added Section 203(f), EUCA, to provide for an optional alternative indicator that states may use to trigger "on" EB based on the TUR. That indicator requires that, for the most recent three months for which data for all states is published, the average TUR in the state (seasonally adjusted) for the most recent three-month period equals or exceeds 6.5 percent and the average TUR in the state (seasonally adjusted) equals or exceeds 110 percent of the average TUR for either or both of the corresponding three-month periods in the two preceding calendar years (look-back). The 1992 amendments also provided for a calculation of a "high unemployment period" when the TUR in a state equals or exceeds 8 percent and meets the 110 percent look-back described above, permitting the payment of additional weeks of EB. Section 203(f)(3), EUCA, provides that "determinations of the rate of total unemployment in any state for any period \* \* \* shall be made by the Secretary." An EB period ends when the state no longer meets any of the "on" triggers provided for in state law.

Regulations at 20 CFR 615 implement the provisions of EUCA relating to the IUR indicators, including how they will be calculated. The regulation, at 20 CFR 615.12, explains the IUR triggers and how the rates are calculated. The regulation does not address the TUR indicator. The Department is issuing this guidance to describe how the TUR indicators are calculated for purposes of determining whether a state meets the 110 percent look-back requirement. The Department plans to promulgate regulations about this methodology in the near future.

In the absence of explicit guidance and regulation, the Department previously adapted a portion of the existing guidance for the IUR look-back indicator as a basis for calculating the TUR look-back indicator as well. Specifically, in computing the look-back percentage for the TUR trigger the procedure for determining the number of significant digits from the resulting fraction followed 20 CFR 615.12(c)(3).

The TUR trigger is calculated using unemployment rates determined by the Bureau of Labor Statistics. These rates are determined using sampled data and therefore have error around them. In contrast, IUR triggers are calculated from administrative data and thus represent the full universe. Because of these differences in the calculation of the insured and total unemployment rates, the Department has determined that an appropriate methodology for calculating the look-back on the TUR indicator is to switch from truncation at the fourth decimal place as used for the IUR to rounding at the second decimal place.

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 permitted states to amend state law in order to make determinations of whether there is an "on" or "off" indicator by comparing current unemployment rates to the unemployment rates for the corresponding period in the three preceding years. Authority to use this three-year look-back applies only for weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2011. The Department will also use the methodology described below in determining whether a state meets the three-year TUR look-back criteria for those states that chose to amend their law to take advantage of this temporary authority.

4. *Methodology.* The Department will now use the following method of computing the current rate as a percentage of the comparable rate in prior years (look-back) for the TUR

indicator: On a monthly basis, the three month average, seasonally adjusted rate of total unemployment is divided by the same measure for the corresponding three months in each of the applicable prior years, that is, either a two- or three-year look-back, as specified in state law. The resultant decimal fraction is then rounded to the hundredths place (the second digit to the right of the decimal place). The resulting number is then multiplied by 100 and reported as an integer and compared to the statutory threshold to determine the state's trigger status.

5. *Effective date of implementation.* In order to give full effect to this methodology, and to ensure that all unemployed individuals who are eligible to receive EB are paid in a timely manner, the Department is implementing the methodology described in Section 4 of this guidance retroactive to April 16, 2011.

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

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

Dated: June 6, 2011.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–74,671]

#### **Hewlett Packard, Global Parts Supply Chain, Global Product Life Cycles Management Unit, Including Teleworkers Reporting to Houston, TX; Notice of Intent To Terminate Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 8, 2010, applicable to workers and former workers of Hewlett Packard, Global Parts Supply Chain, Global Product Life Cycles Management Unit, including teleworkers reporting to Houston, Texas (subject firm). The Department's Notice of certification was published in the **Federal Register** on November 23, 2010 (75 FR 71460).

At the request of the State of Texas, the Department reviewed the