

Conformity Requirements for State UC Laws

Base Period Services Performed by Aliens

Background

Section [3304](#)(a)(14) was originally added to the Federal Unemployment Tax Act (FUTA) in 1976. The intent of Congress was to prevent undocumented aliens from collecting unemployment compensation (UC). UC may be paid to an alien if he or she was lawfully permitted to work at the time the services were performed, and is able and available for work at the time unemployment compensation claims are filed. Section [3304](#)(a)(14) addresses the individual's alien status at the time the wages in the base period were earned. The availability requirement, which is based on the "payment when due" and "withdrawal" standards, applies to the individual's work status at the time compensation is claimed. (See Immediate Deposit and Withdrawal.)

Federal Law

Section [3304](#)(a)(14)(A), FUTA, requires that UC not be payable on the basis of services performed by an alien unless:

- The alien was lawfully admitted for permanent residence at the time the services were performed, or
- The alien was lawfully present for purposes of performing the services, or
- The alien was permanently residing in the U.S. under color of law (PRUCOL) at the time the services were performed.

§[3304](#)(a)(14)(B), FUTA, requires that any data or information required to determine whether UC is not payable because of alien status must be uniformly required of all applicants for compensation.

§[3304](#)(a)(14)(C), FUTA, requires that an alien whose application for UC would otherwise be approved may not be denied compensation due to alien status except on a "preponderance of the evidence."

Frequently Asked Questions

1. Must a state include all three of these categories in state law?

No. Section [3304](#)(a)(14), FUTA, is an example of a requirement that restricts claimants' rights to compensation. The basic requirement that must be contained in all state laws is

that base period wages are not available based on services performed by aliens unless they are in one of the categories specified above. States have the option of including any of these three exceptions to the requirement. As a practical matter, all states contain at least the first two categories, and most also include the third (PRUCOL).

2. May a state law include a definition of PRUCOL that is narrower than the Department of Labor's definition such that fewer aliens would meet the definition?

Yes. It may not, however, have a definition that is broader than the Department's definition such that it includes more aliens under the definition.

3. May a state deny benefits to an alien who does not have proof of acceptable alien status?

As with any request for information, the agency must give the individual a reasonable amount of time to provide such information before issuing a determination affecting eligibility for benefits. Section [1137\(d\)\(4\)\(A\)](#), SSA, provides that the state must provide a reasonable opportunity to submit evidence indicating satisfactory immigration status and that the state may not "delay, deny, reduce or terminate" the individual's eligibility on the basis of their immigration status until such reasonable opportunity has been provided. If the individual fails to provide the documentation, then the agency would handle the claim as it would any other failure to provide required information.

4. In addition to being required to be lawfully present when the services in the base period were performed, do aliens have to have current work authorization in order to receive UC?

Aliens must be able and available for work while claiming compensation. This means the claimant must have current work authorization during the claim series. This is a separate issue from status during the base period. This requirement is not based on [§3304\(a\)\(14\)](#), FUTA, but on the so called "payment when due" and "withdrawal" standards.

5. What must a state agency do to verify an individual's alien status?

The state agency must require that any individual applying for UC, under penalty of perjury, declare in writing whether or not s/he is a citizen or a national of the United States. If the individual is not a citizen or a national, the individual must present alien registration documentation or other documentation from the USCIS containing the individual's alien admission number or alien file number or such other documents as the state determines constitute reasonable evidence indicating a satisfactory immigration status.

Sections [1137\(d\)](#) and (e), SSA, require that aliens applying for certain entitlement programs, including UC, have their immigration status verified through the Systematic Alien Verification for Entitlements (SAVE) Program. The SAVE program is an

automated verification process that the state must use to verify the information by entering the alien's registration number into the USCIS data base to obtain verification of the individual's authorization to work.

References

[Green Book](#). Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976, including Supplements 1-5.

[UIS Information Bulletin 13-85](#). Systematic Alien Verification for Entitlement (SAVE) Program.

[UIPL 1-86](#) Eligibility of Aliens for Unemployment Compensation Under Section 3304(a)(14)(A), FUTA.

[UIPL 1-86, Change 1](#). Aliens Permanently Residing in the U.S. Under Color of Law. (PRUCOL).

[UIPL 12-87](#) and [UIPL 12-87, Change 1](#). Amendments Made by the Tax Reform Act of 1986 (P.L. 99-514), the Alien Farmworker Act (P.L. 99-595), and the Immigration Reform and Control Act of 1986 (P.L. 99-603).