

1983

**Silas B. Martinez v. Board Of Review of the Industrial Commission  
Of Utah, Department of Employment Security : Brief of Appellant**

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IN THE SUPREME COURT OF THE STATE OF UTAH

-----  
JUAN B. MARTINEZ, )

Plaintiff - )  
Appellant, )

-vs- )

Case No. 19031

BOARD OF REVIEW OF THE )  
INDUSTRIAL COMMISSION OF )  
UTAH, DEPARTMENT OF )  
EMPLOYMENT SECURITY, )

Defendant - )  
Respondent. )  
-----

BRIEF OF APPELLANT  
-----

Appeal from the decision of the Industrial Commission of Utah, finding that appellant failed to make a systematic and sustained effort to seek work as required for eligibility under the Federal Supplemental Compensation Program.  
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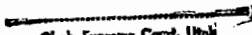
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**FILED**

MAY 20 1983

  
Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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JOHN HOLZ,

)

Plaintiff -

)

Appellant,

)

-vs-

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Case No. 19031

BOARD OF REVIEW OF THE  
INDUSTRIAL COMMISSION OF  
UTAH, DEPARTMENT OF  
EMPLOYMENT SECURITY,

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IN THE SUPREME COURT OF THE STATE OF UTAH

---

R. B. MARTINEZ,

)

Plaintiff -  
Appellant,

)

-vs-

)

Case No. 19031

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BOARD OF REVIEW OF THE  
INDUSTRIAL COMMISSION OF  
UTAH, DEPARTMENT OF  
EMPLOYMENT SECURITY,

)

)

Defendant -  
Respondent.

)

---

BRIEF OF APPELLANT

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NATURE OF THE CASE

This is a review of the decision of the Industrial Commission of Utah, affirming a decision of the Appeals Referee disqualifying the appellant from receiving unemployment compensation benefits under the Federal Supplemental Compensation Program on the basis that he had failed to actively seek work. The Appeals Referee's decision left in place a decision of a Department representative denying further benefits to the appellant, pursuant to Section 30(1)(b) of the Industrial Commission of Utah Rules and Regulations, effective October 3, 1982 and continuing until the appellant had returned to bona fide

covered employment for the week of October 3, 1982, at least six times the weekly benefit amount.

#### DISPOSITION OF CASE

In a decision dated February 3, 1983, the Industrial Commission of Utah, through its Board of Review, refused appellant's request for reconsideration of the Board of Review's decision, dated January 18, 1983, wherein the Board of Review affirmed the previous decision of the Department of Employment Security and its Appeals Referee.

#### RELIEF SOUGHT ON APPEAL

Appellant asks the court to reverse the holding of the Industrial Commission Board of Review finding that the appellant failed to make a systematic and sustained effort to seek work as required for eligibility under the Federal Supplemental Compensation Program. Appellant requests the court to rule that the respondent's decision was not supported by substantial evidence and improper under Utah law. Appellant asks the court to find that he was entitled to unemployment compensation benefits during the week of October 3, 1982 and that the disqualification penalty imposed by respondent was arbitrary, capricious and unreasonable.

#### PRELIMINARY STATEMENTS

From June 15, 1980 to September 29, 1980, appellant was employed by Martinez and Sons Construction Company of Ogden, Utah as an accountant. (P. 24, 40) On



On January 1, 1981, the appellant applied for unemployment benefits with the Utah Department of Employment Security. (R. 40) Appellant's claim for regular unemployment compensation benefits was approved. Still unable to find employment in his field, on March 3, 1982, he applied for and began receiving extended benefits. (R. 38) On September 13, 1982, appellant applied for, and subsequently began receiving, unemployment benefits under the Federal Supplemental Compensation Program. (R. 37)

On October 14, 1982, appellant signed and submitted a weekly work search record for extended benefits covering the seven day period ending on October 9, 1982. (R. 34) In that record, appellant reported having contacted two businesses during the relevant time period. On October 15, 1982, an Eligibility Determination Notice was mailed to appellant notifying him that he had been denied benefits indefinitely. (R. 33) The Notice contained the following findings:

It is determined that you failed to maintain a systematic and sustained effort to seek employment in accordance with regulations.

In the same Notice appellant was advised that he had "failed to actively seek work" under Section 3e(1)(b). (R. 33) Appellant was further notified that he was denied benefits indefinitely under the cited section of the rules and regulations for the following time period:

Beginning 10/3/82, and for each

week thereafter until subsequent to the first week of employment. The respondent received no wages during the first week of employment and after work and for 3 weeks equal to at least one weekly benefit amount for which he is eligible. (R. 33)

On October 16, 1982, appellant filed his timely appeal from the Department Representative's decision. (R. 32) On November 10, 1982, appellant appeared without counsel at the Ogden Job Service Center where a hearing on his appeal was conducted and a transcript of the hearing produced. (R. 22-31) Based on the testimony and evidence presented at the hearing, the Appeals Referee, Terry J. Kump, entered his decision, dated November 17, 1982, affirming the decision of the Department Representative denying benefits and disqualifying appellant from further benefits until the requirement of bona fide covered employment had been met. (R. 20-21) This decision of the Appeals Referee was subsequently affirmed by the Industrial Commission Board of Review on January 18, 1983 (R. 15) and Request for Reconsideration denied by the Board on February 8, 1983. (R. 7) It is from these decisions of the respondent that appellant makes his appeal.

#### STATEMENT OF FACTS

Appellant, Silas B. Martinez, is a 32-year-old male who lives with his wife and two children in Ogden, Utah. He has been professionally trained as an accountant and was employed prior to the relevant dates of this appeal as an

contract with Martinez and Sons Construction Company.

Following termination from that employment, and unable to support his family on his wife's salary, he began receiving regular unemployment compensation benefits in June 1981.

On September 12, 1982 appellant became eligible for unemployment compensation benefits made available under the Federal Supplemental Compensation Program. He began receiving these benefits and complied with all rules and regulations of the respondent until the week ending October 9, 1982. During that week, appellant was attending school and also making job inquiries. However, he had received a set of kitchen cabinets which required installation in his home. For this personal reason, appellant made only two job contacts during the week in question, instead of the five contacts expected by respondent. Appellant, in his testimony, described his personal reasons for not making the additional contacts:

[T]he only reason that I didn't search for more than two was because there [sic] some very extenuating circumstances. I purchased a set of cabinets for my kitchen and they were supposed to arrive two weeks prior to that time, which I had allotted the time. Well, as they come [sic] in late I was forced into having to install them because of the weather. If you will remember back then, we were having quite bad weather as far as rain is concerned. I didn't have any storage space and so I was, like I said, I was forced to put them in. I didn't have any place to keep them. I had left them outside being that they're made out of particle board, they would have been no good to anymore. [sic] (R. 25)

Significantly, one of the reasons why appellant was not on the wage claim was that by the time appellant contacted the Weber County Welfare Computer Center, he was not in this contact, appellant obtained part-time employment with this employer (K. 25, 26) and was so employed on the day of the hearing.

#### ARGUMENT

RESPONDENT'S DETERMINATION IS NOT  
SUPPORTED BY SUBSTANTIAL EVIDENCE, IS  
ARBITRARY, CAPRICIOUS AND UNREASONABLE  
AND CONTRARY TO UTAH LAW.

#### POINT I.

APPELLANT'S EFFORTS TO OBTAIN EMPLOYMENT  
MET THE FEDERAL AND STATE REQUIREMENTS  
FOR ACTIVELY SEEKING EMPLOYMENT.

The benefits for which appellant applied for the week ending October 9, 1982 were made available pursuant to the Federal Supplemental Compensation Act of 1982.

(Subtitle A of Title VI of Pub. L. 97-248 (hereinafter referred to as "FSC Act of 1982") 26 U.S.C. §3304(a) et seq. On December 3, 1982 the Department of Labor, Employment and Training Administration, issued a General Administration Letter containing federal supplemental compensation implementation instructions. 47 Fed. Reg. 54706 (Dec. 3, 1982) (hereinafter referred as "GAL 2-83") (For convenience, a copy of GAL 2-83 is included herein as Appendix A)

By way of background, GAL 2-83 refers that the program provides for six months conditional award of

...ent benefits to individuals who have exhausted  
rights to regular benefits and who have no rights to  
of additional benefits. The GAL further notes, in

The payment of FSC will be limited  
to individuals who engage in a  
systematic and sustained effort to  
find work... 47 Fed. Reg. 54706, ¶4.

The FSC implementing instructions set forth in  
Part C the eligibility requirements for benefits. They  
provide, in part:

To be eligible for a week of  
Federal Supplemental Compensation,  
an individual must:

....

f. Have been actively seeking work during  
the week he/she is claiming FSC and  
provide to the State agency tangible  
evidence of a systematic and sustained  
effort to obtain work. 47 Fed. Reg.  
54708-709, Part C.

The implementing instructions further provide concerning  
"the actively seeking work requirement":

The extended benefit requirement  
to actively seek work under Section  
202(a)(3)(A)(ii), EUCA, is also a  
condition of eligibility for FSC.  
In accordance with the provisions  
of 202(a)(3)(E) of EUCA, and [sic]  
individual will be treated as actively  
engaged in seeking work if:

a. The individual has engaged in a  
systematic and sustained effort to  
obtain work during such week, and

b. The individual provides tangible  
evidence to the State agency that he/she  
has engaged in such an effort during

such week.

Any disqualification of an individual for failure to actively seek work under a week of RSC will result in a denial of benefits with respect to the week in which such failure occurs and will not end until such individual purges the special disqualification in accordance with Section 202(a) (5) (B) of the EUCA. The total amount required to be earned to purge this disqualification cannot be less than four times the individual's weekly benefit amount. See UIPL No. 14-81. 47 Fed. Reg. 54710, ¶6.

In applying the "systematic and sustained effort to obtain work" standard, the respondent requires five contacts per week with prospective employers. Claimants for unemployment benefits are advised of respondent's job contacts requirement by signing Form 602-E wherein an acknowledgement is made of the employer contacts requirements. (R. 35) If the required job contacts are not made for any reason, respondent classifies the claimant as disqualified under Section 3 e(1)(b) of the Industrial Commission of Utah Rules and Regulations which provides:

Notwithstanding the provisions of the Utah Employment Security Act concerning regular benefits an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the commission finds that during such period:

....

(b) He failed to actively engage in seeking work as prescribed under paragraph (5).

....

(5) For the purpose of subparagraph (b) of

paragraph (1), an individual shall be treated as actively engaged in seeking work during any week if --

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week, and

(b) The individual furnishes tangible evidence that he has engaged in such effort during such week.

Few reported decisions interpreting the cited "systematic and sustained" language are available. However, one case, Skirin v. Bowling, 86 Ill. App. 3d 954, 408 N.E. 2d 355 (1980) was discovered wherein the Illinois court considered the meaning of an identical provision in the Emergency Unemployment Compensation Act of 1974 as amended.<sup>1</sup> In Skirin the claimant was found by the local unemployment office to be ineligible for FSB because of a failure to

---

<sup>1</sup>Section 102(h) of the Emergency Unemployment Compensation Act of 1974, as amended, states in pertinent part (26 U.S.C.A. §3304 note): "(1) In addition to any eligibility requirement of the applicable State law, emergency compensation shall not be payable for any week to any individual otherwise eligible to receive such compensation if during such week such individual--

\* \* \* \* \*

"(B) fails to actively engage in seeking work.

\* \* \* \* \*

"(d) For purposes of this subsection--

\* \* \* \* \*

"(B) An individual shall be treated as actively engaged in seeking work during any week if-- "(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and "(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week." Skirin v. Bowling, supra, at 357.

actively seek work. The claimant's work report form listed only one job contact per week.

In reversing the Illinois Unemployment Board's decision, the Illinois court rejected the Board's contention that the federal standard of "actively engaged in seeking work," was more stringent than the standard of "actively seeking work" under the Illinois Unemployment Insurance Act. The court noted that neither its efforts nor the efforts of counsel had produced any authority discussing possible differences between federal and state legislation on the subject. Therefore, it could not be said that the federal standard was more strict than the state.

The Skirin case is particularly relevant to this appeal, since the respondent, by demanding five job contacts in order to be eligible for Federal Supplemental Compensation, imposed a stricter standard than applied in regular unemployment cases. The respondent currently is requiring 2 to 3 new in-person contacts in order to meet the actively seeking work requirement for regular benefits. Utah Admin. Bull. No. 83-7 at 77 (April 1, 1983). Had the respondent applied such a standard in appellant's case he would have been considered eligible.

No sufficient rationale has been offered by the respondent for its position that five contacts with potential employers during a week is necessary to meet the "systematic and sustained effort to obtain work"



employment. Rather, decisions of this court in considering availability for regular unemployment compensation benefits show a determination of whether a claimant has actively sought employment is an inherently subjective one. Rather than analyzing a claimant's efforts in terms of a minimum or maximum number of job contacts, the Utah court, as well as the courts in several other jurisdictions, have focused their analysis on the good faith and reasonableness of the claimant's efforts. For example, the court stated in Gocke v. Wiesley, 18 Utah 2d 245, 420 P.2d 44, 46 (1966):

The Industrial Commission contends, and we agree, that the eligibility for compensation is not established by showing a passive willingness to gain employment. It seems that the claimant must act in good faith and make an active and reasonable effort to secure employment.

This holding has been cited with approval by the court in Martinez v. Board of Review, 25 Utah 2d 131, 132, 477 P.2d 567 (1970) and Denby v. Board of Review of The Industrial Commission, 567 P.2d 626, 628 (Ut. 1977).

In Denby the court cited with approval the case of Texas Employment Commission v. Holberg, 440 S.W. 2d 38, 40-41 (Tex. 1969), wherein the Texas court stated the test for availability for work in these words:

The test suggested is subjective in nature. Whether or not a claimant is in fact available for work depends to a great extent upon his mental attitude, i.e., whether he wants to go to work or is content to remain

1978). The fact that a person has not  
attributed to an individual is not sufficient  
the person had been in his own mind  
to obtain work. A person who is  
genuinely attached to the labor market  
and desires employment will make a  
reasonable attempt to find work, and  
will not wait for a job to seek him  
out.

Case law in other jurisdictions supports the  
conclusion that the proper standard for judging active job  
search efforts is qualitative rather than quantitative. In  
Singleton v. Director of Employment Security, 364 So.2d 281  
(Ala. 1978) the court considered facts similar to those in  
the instant case and held that proof of an exact number of  
job contacts was not required. The court held:

There is no hard and fast rule as  
to what constitutes availability for  
work. It depends on the facts and  
circumstances of each case. It is  
established that a claimant must at  
least show that he acted in good faith  
and made a reasonable effort to secure  
suitable employment of a character  
which he is qualified to perform by past  
experience or training. Department of  
Indus. Relations v. Smith, Ala. Civ. App.,  
360 So.2d 726 (1978).

....

The testimony of claimant was that she  
was available for work from the time  
she terminated her last employment; that  
she applied for jobs and was employed at  
the time of the hearing. There was no  
refutation of her testimony. A claimant  
is not required to prove the exact  
number of applications for employment  
made; there merely must be such evidence  
that the totality of the circumstances  
shows good faith and reasonable efforts.  
Department of Indus. Relations v.  
Smith, supra.

In sharp contrast to the good faith reasonable effort standard applied by the Utah court and other jurisdictions is the inflexible approach of respondent in the current case. There is no evidence in the record to suggest that the appellant made anything less than a good faith effort to obtain employment. In fact, the appellant made two job contacts during the week triggering the disqualification, one of which resulted in part-time employment for him. (R. 26) No evidence was offered by the respondent that, prior to the week ending October 9, 1982, the appellant had failed to actively seek work. Further, appellant's handwritten appeal, dated October 18, 1982, notes that even after his disqualification, he continued to actively seek work. The appellant wrote:

For the week of 10/7/82 (the appellant apparently meant 10/17/82) I have accumulated 11 job searches, 4 of which are very promising. I'm vigorously seeking work. (R. 32)

Viewed in its entirety, the record supports the conclusion that the appellant made a good faith reasonable effort to obtain employment for the week ending October 9, 1982. Apart from the fact that personal obligations restricted his ability to contact potential employers, the record shows that the appellant believed he was making a reasonable, good faith effort to obtain employment. During his hearing, he called to the attention of the Appeals referee a handout he had received when applying for benefits

the applicable authority for benefits during the period of unemployment. Reynolds Club, Inc. v. Utah Liquor Control Board, 601 P.2d 661 (912).

The court's independent was equally unclear as to the standard of proof and is evident from a review of the court's brief findings. (R. 24) The Appeals Referee, in response to appellant's questions, described the applicable law as being intlexible and further advised:

The Utah law says you must actually seek employment each and every week. It doesn't say specifically Monday and so forth. That can be done. Various permutations [sic] may be placed on a week search effort but they're not spelled out specifically. Federal guideline [sic] says that it must be systematic and sustained, meaning or interpreted to mean that it must be every day, every week. To go out and look for 10 jobs on one day is not a systematic and sustained effort. To go out and look for 10 jobs over the course of 9 days, is. (R. 27)

The appeals referee cited no authority for his interpretation of the meaning of "systematic and sustained". The most directly applicable authority discovered by appellant is that contained in Skirin v. Bowling, supra, where the court held the federal standard is not necessarily controlling over the state standard. In Skirin, the plaintiff was unemployed for a four-week period and the defendant claimed the plaintiff in Skirin did not actively seek employment the last two weeks of September, 1981.

...and systematic and sustained  
discrimination.

FOURTH.

THE BOARD'S FINDING IS UNREASONABLE IN  
THAT THE FACTS PRECLUDE THE APPELLANT  
FROM A COMPLETE CAUSE.

The Utah Employment Compensation law has been  
characterized on many occasions as remedial in nature and  
intended to protect the health, morals and welfare of people  
by providing a cushion to the shocks and rigors of  
unemployment. Ginger Sewing Machine Co. v. Industrial  
Commission, 134 P.2d 479, 485 (Ut. 1943); Continental Oil  
Co. v. Board of Review of The Industrial Commission, 568  
P.2d 121 (Ut. 1977). Being remedial in nature, the  
unemployment laws should be liberally construed and  
administered; and decisions should be rendered in view of  
the true intent and purpose of the law. Johnson v. Board of Review  
of The Industrial Commission, 320 P.2d 315 (Ut. 1958). See  
also, Teague v. Industrial Commission, 243 P.2d 964, 967 (Ut.  
1952).

In finding that applicant failed to actively seek  
employment, the respondent has effectively thwarted the remedial  
purpose of the unemployment laws. As the cited portion of  
the respondent's written instructions shows, a finding that a  
person is "systematic and sustained  
discrimination" is carried with it a severe penalty.

the respondent's disposal of appellant's case  
on the basis of the number of job contacts was  
contrary to holdings of the Utah court and other  
jurisdictions.

Respondent's reliance on a strictly quantitative  
standard in the form of five job contacts is unreasonable  
and unjustified. Relevant case law shows that the  
respondent misapplied the law to the facts of appellant's  
case. The decision of the Board of Review should be  
reversed, appellant paid his benefits and the  
disqualification removed.

DATED this 20th day of May, 1983.

Respectfully Submitted:

UTAH LEGAL SERVICES, INC.

  
MICHAEL E. BULSON  
Attorney for Appellant



which claims to equal to such as  
and term of the extended benefit  
period and the benefit year with  
periods which such rights existed  
1982, the State shall be deemed  
to have complied with the Act.

1. The Act requires that the weekly  
benefit amount for a week of  
unemployment shall be equal to the  
average weekly wage for the week  
preceding the week of unemployment.  
The Act also requires that the  
benefit year be the most recent benefit  
year in which the insured was insured with the  
State for a week of unemployment.

2. The Act requires that the terms and conditions  
of extended compensation  
payment to FSC claims

be the same as FSC benefits. Subsection  
(a) requires the State to establish an  
account for each individual eligible  
for FSC. The amount payable as  
extended compensation in each individual account is  
calculated as follows:

a. 50 percent of the total amount of  
extended compensation (including  
dependent allowances) payable with  
respect to the most recent benefit year.

b. 50 percent of the average weekly  
benefit amount for the week of  
unemployment.

3. The Act provides that the  
extended benefit period is in  
effect for a State on or after June 1, 1982,  
and for the week for which the  
State has a FSC. The maximum  
amount of FSC payable is ten times the  
average weekly benefit  
amount (or a lesser amount). For States  
not having the extended benefit period  
in effect on or after June 1, 1982,  
the amount of FSC payable is  
calculated as follows: the weekly benefit amount  
becomes payable for weeks during a  
high unemployment period. High  
unemployment period is defined as a  
period:

a. Which begins the third week after  
the first week for which the extended  
benefit trigger rate equals or exceeds 3.5  
percent, and

b. Which ends the third week after the  
extended benefit trigger rate drops  
below 3.0 percent.

4. Each unemployment period must last  
at least four weeks. There is no such  
time period for the six week  
extension of benefits, and once a State  
has a ten week period, that maximum  
period may be extended for the FSC  
benefit year. The FSC claims filed  
with the State shall be paid in the  
order of filing.

5. The Act requires that the State shall  
be deemed to have complied with the Act  
if the State has a FSC claimant on or after  
June 1, 1982.

6. The Act requires that the State shall  
be deemed to have complied with the Act  
if the State has a FSC claimant on or after  
June 1, 1982.

7. The Act requires that the State shall  
be deemed to have complied with the Act  
if the State has a FSC claimant on or after  
June 1, 1982.

8. The Act requires that the State shall  
be deemed to have complied with the Act  
if the State has a FSC claimant on or after  
June 1, 1982.

9. The Act requires that the State shall  
be deemed to have complied with the Act  
if the State has a FSC claimant on or after  
June 1, 1982.

10. The Act requires that the State shall  
be deemed to have complied with the Act  
if the State has a FSC claimant on or after  
June 1, 1982.

#### C. Section 604—Payments to the States

1. Amounts. Subsection (a) authorizes  
payments to the State, which have  
entered into an agreement, equal to 100  
percent of the amount of FSC payments  
made by the State in accordance with  
the Act and these instructions, as  
determined by the Secretary.

2. UCFF/UCX. Subsection (b)  
authorizes financing of FSC payments  
for UCFF and UCX claimants from the  
funds provided for these programs.

3. Method of Payment. Subsection (c)  
provides for payments to the States  
either in advance or by reimbursement  
in amounts the Secretary estimates for  
each calendar month. Estimates may be  
made based on statistical sampling, or  
other agreed upon methods.

#### D. Section 604—Financing Provision

1. EB Account. Subsection (a) requires  
the use of funds in the EUCAA account  
in the Unemployment Trust Fund for  
payments to States for the costs of FSC  
benefits. The Secretary of Labor will, from  
time to time, certify to the  
Secretary of the Treasury the amounts  
to be paid to States, and the Secretary of  
the Treasury will make such payments  
prior to audit or settlement by the  
General Accounting Office.

2. Authorization. Subsection (b)  
authorizes Congress to appropriate  
funds to the EB account to cover costs of  
FSC benefits. Subsection (c) authorizes  
Congress to appropriate funds from  
general revenues to the employment  
security administration account to  
finance costs of FSC administration.

#### E. Section 605—Definitions

1. Terms. Under Subsection (1), the  
following terms have the same meaning  
as those applied to claims for extended  
benefits.

- a. Compensation;
- b. Regular Compensation;
- c. Extended Compensation;
- d. Base Period;
- e. Benefit Year;
- f. State;
- g. State Agency;
- h. State Law;
- i. Week.

The meaning assigned to these terms in  
the extended benefit regulations (20 CFR  
Part 615) shall apply to the FSC program.

2. Period of Eligibility. Subsection (2)  
limits eligibility for FSC benefits by  
specifying that an individual will not  
have a period of eligibility for FSC  
benefits unless:

- a. the individual's benefit year ends  
on or after June 1, 1982, or
- b. the individual was entitled to  
extended benefits for a week which  
begins on or after June 1, 1982.

#### F. Section 606—Fraud and Overpayments

1. Fraud Penalties. Subsection (a)  
specifies that if an individual knowingly  
has made or caused to be made by  
another, a false statement or  
misrepresentation or nondisclosure of a  
material fact and as a result obtains any  
amount of FSC to which he/she was not  
entitled, the individual:

- a. Shall be ineligible for further FSC  
benefits, as provided in the provisions of  
the applicable State law relating to  
fraudulent claims, and
- b. Shall be subject to prosecution  
under Section 1001 of Title 18, United  
States Code.

#### 2. Recovery of Overpayments.

Subsection (a)(2)(A) authorizes the  
States to require repayment of FSC  
overpayments, except that the State  
agency may waive repayment if:

- a. The individual was without fault in  
receiving the payment, and
- b. Repayment would be contrary to  
equity and good conscience.

The criteria for the above tests of  
waiver of overpayments are detailed in  
the instructions under recovery of  
overpayments.

Subsection (a)(2)(B) authorizes  
recovery of overpayments by offset  
against any FSC benefits payable or  
against any compensatory amounts in  
the nature of compensation payable  
under any other Federal unemployment  
compensation law (UCFF or UCX) or  
similar Federal law (TRA, UXA, REPP,  
AEPP, etc.) administered by the State  
agency. The period during which FSC  
overpayments may be recovered by  
offset is limited to three years after the  
date the overpayment was received, and  
recoupment is limited to 50 percent of  
the individual's weekly benefit payment  
from which the deduction is made.

3. Fair Hearing. Subsection (a)(2)(C)  
prohibits recovery of the overpayment  
until an appealable determination has  
been issued and has become final.

Subsection (a)(3) provides that  
reconsideration and appeal rights from  
determinations made under the State  
law also apply to fraud and  
overpayment determinations. It should



specifically noted that such compensation and appeal rights apply to determinations of entitlement to or denial of benefits to FSC.

#### Procedures for Implementing FSC

The Federal Supplemental Compensation Act of 1982, Pub. Law 97-351, Title VI of Pub. L. 97-351, as amended to paragraph 3, 1982, "FSC program" means the agreement between the State and the Secretary of Labor under which the State agency makes payments of Federal Supplemental Compensation in accordance with the Act as interpreted by the Secretary or the Department of Labor as set forth in these instructions and other instructions issued by the Department.

3. "Period of Eligibility" means, with respect to any individual, the period beginning with the week following the week in which the State entered into an agreement to pay Federal Supplemental Compensation, or the period beginning after September 12, 1982, if the agreement is the later, and ending with the first week which begins before April 1, 1983, except that an individual shall not be a period of eligibility unless the individual's benefit year ends on or after June 1, 1982, of such individual was entitled to extended benefits for a week ending on or after June 1, 1982.

4. "Federal Supplemental Compensation" means the compensation payable under the Federal Supplemental Compensation Act of 1982 and which is referred to as FSC.

5. Terms which have the same meanings as those defined in the Extended Benefit regulations 20 CFR Part 612:

a. "Base Period" means, with respect to an individual, the base period as determined under the applicable State law for the individual's benefit year.

b. "Benefit Year" means, with respect to an individual, the benefit year as defined in the applicable State law.

c. "Applicable Benefit Year" means, with respect to an individual, the current benefit year if, at the time an initial claim for FSC is filed, the individual has a benefit year only in the State in which such claim is filed, or, in the absence of such, the individual's most recent benefit year. For this purpose, the current benefit year, for an individual who has received benefit payments from the State where an unemployment claim was filed, is the benefit year with the latest ending date. If an individual's years have the same ending date, the latest year in which

the latest continued claim for regular compensation was filed.

d. "Compensation" means cash benefits (including dependents' allowances) payable to individual, with respect to their unemployment, and includes regular compensation, additional compensation and extended compensation as defined in this section.

e. "Regular Compensation" means compensation payable to an individual under any State law, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include extended compensation or additional compensation.

f. "Extended Compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal State Extended Unemployment Compensation Act of 1970, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to as Extended Benefits of EB.

g. "Additional Compensation" means compensation totally financed by a State under its law by reason of conditions of high unemployment or by reason of other special factors, and when so payable includes compensation payable pursuant to 5 USC Chapter 85.

h. "Secretary" means the Secretary of Labor of the United States.

i. "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

j. "State Law" means the unemployment compensation law of a State approved by the Secretary under Section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)).

k. "Applicable State Law" means the State law of the State which is the applicable State for an individual.

l. "Week" means, for purposes of eligibility for and payment of FSC, a week as defined in the applicable State law, and, for purposes of computation of FSC "on" and "off" indicators and insured employment rates, and the beginning and ending of high unemployment periods, a calendar week.

m. "Week of Unemployment" means a week of total, part total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to the FSC program as if the individual filing a claim for FSC

benefits were filing a claim for regular compensation.

n. "Insured Unemployment Rate" means the rate of insured unemployment for a week determined in the same manner as such rate is determined for the purposes of Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970.

O. *Beginning and Ending of the FSC Program.* For States which enter into a signed agreement by September 11, 1982, an FSC period of eligibility begins September 12, 1982. The earliest compensable week for which FSC will be payable is the week ending September 18, 1982.

For States which enter into agreements after September 11, 1982, the first compensable week will be the first full week beginning on or after the Sunday which follows the date the agreement was signed.

The FSC program is scheduled to end on March 31, 1983, and no FSC will be paid for any week of unemployment which begins after that date.

Accordingly, in the calendar week States, the last compensable week will be the week ending April 2, 1983. In flexible week States, no FSC benefits will be paid for weeks of unemployment beginning after March 31, 1983.

States may terminate the FSC agreement at any time. The FSC period will end 30 days from the date the State notifies the Secretary of its election to terminate the FSC program. No FSC benefits will be payable for weeks which begin after the date the agreement is terminated. The agreement may also be terminated by the Secretary, as provided in the agreement.

#### C. Eligibility Requirements for Federal Supplemental Compensation

1. *Basic Eligibility Requirements.* To be eligible for a week of Federal Supplemental Compensation, an individual must:

a. Have exhausted all rights to regular compensation under the applicable State law.

b. Have no rights to compensation (including regular and extended compensation) with respect to that week under such law or any other State unemployment compensation law, the Railroad Unemployment Insurance Act, or under any other Federal law, administered by a State agency, and is not paid or entitled to be paid any additional compensation under any such State or Federal law.

c. Have a benefit year which ends on or after June 1, 1982, or be entitled to extended benefits for a week which begins on or after June 1, 1982.

He/she is on 20 weeks of work which is not paid by the WBA. He/she is not eligible for FSC because he/she is not actively seeking work during that period (UIPL No. 14-81).

3. He/she is not in receipt of compensation from the Federal State agency. He/she has been informed that no compensation has been prepared for him/her. He/she has been denied compensation because he/she is not actively seeking work during that period. He/she is not eligible for FSC because he/she is not actively seeking work during that period (UIPL No. 14-81).

4. He/she is actively seeking work during the week he/she is claiming FSC and is not receiving any offer of suitable work from the State agency. He/she is not eligible for FSC because he/she is not actively seeking work during that period (UIPL No. 14-81).

5. He/she is actively seeking work during the week he/she is claiming FSC and is not receiving any offer of suitable work from the State agency. He/she is not eligible for FSC because he/she is not actively seeking work during that period (UIPL No. 14-81).

6. He/she is actively seeking work during the week he/she is claiming FSC and is not receiving any offer of suitable work from the State agency. He/she is not eligible for FSC because he/she is not actively seeking work during that period (UIPL No. 14-81).

7. He/she is actively seeking work during the week he/she is claiming FSC and is not receiving any offer of suitable work from the State agency. He/she is not eligible for FSC because he/she is not actively seeking work during that period (UIPL No. 14-81).

8. He/she is actively seeking work during the week he/she is claiming FSC and is not receiving any offer of suitable work from the State agency. He/she is not eligible for FSC because he/she is not actively seeking work during that period (UIPL No. 14-81).

9. He/she is actively seeking work during the week he/she is claiming FSC and is not receiving any offer of suitable work from the State agency. He/she is not eligible for FSC because he/she is not actively seeking work during that period (UIPL No. 14-81).

her entitlement to benefits was otherwise totally or partially reduced.

An individual is an exhaustee with respect to an expired benefit year which ends on or after June 1, 1982, when he/she is precluded from establishing a second (new) benefit year by reason of the requalifying provision in State law which requires earnings after the beginning of the first benefit year or he/she establishes a second benefit year but is suspended indefinitely until he/she has met the requalifying earnings requirements. The individual with respect to the expired benefit year when he/she satisfies the requalifying earnings requirement and compensation is payable in the new benefit year.

An individual shall be treated as having no rights to benefits even though as a result of a pending appeal with respect to wages or employment or both which were not included in his/her original monetary determination he/she may subsequently be determined to be entitled to more or less compensation. This also applies to an individual who may be denied benefits for certain weeks during the year by reason of a State law seasonal provision but has entitlement to future weeks in the off season.

For an individual who has established a benefit year but during such year his/her wage credits were cancelled or the right to regular, additional, or extended compensation was totally reduced as the result of a disqualification, he/she too is considered to have no benefit rights to such compensation and is an exhaustee for the purposes of FSC.

In those States which pay additional benefits (AB), it will be necessary to determine if an individual has been paid or is entitled to be paid additional compensation before FSC can be paid. Certain State laws provide for the suspension of the payment of additional benefits when a federally financed program of benefits is payable. In these cases, individuals may be paid FSC in lieu of AB. However, under no circumstances shall FSC and additional benefits (or any other unemployment benefits) be paid for the same week.

Under Section 202(c) of the Federal-State Extended Unemployment Compensation Act of 1970, an individual filing for Extended Benefits under the Interstate Benefit Payment Plan from a State which is not in an EB period is eligible for the first two weeks of EB filed from that State and is disqualified for any other benefits in his/her EB account until such time as his/her agent State begins an EB period or until such time as he/she files from a State which is in an extended benefit period. Individuals who were denied extended

benefits under this provision shall be deemed to have no benefit rights to EB and will be eligible for FSC.

Liable State interstate claim units need to monitor the extended benefit trigger status of agent States and be prepared to redetermine FSC claimants' eligibility for extended benefits when an EB period begins in a given agent State.

**Determination of "Period of Eligibility".** Under Section 605(2) of the Act, an individual may establish a "period of eligibility" for FSC for any week which began on or after September 12, 1982, and which begins before April 1, 1983, provided:

a. His/her benefit year ended on or after June 1, 1982, or

b. He/she was entitled to extended benefits for a week which began on or after June 1, 1982.

This means that State agencies in determining whether an individual can qualify for a period of eligibility for FSC, must first look at the individual's benefit year ending date. If that BYE date is on or after June 1, 1982, the individual qualifies for a period of eligibility for FSC and can be paid FSC if all the other eligibility requirements are met.

If an individual has a benefit year ending (BYE) date prior to June 1, 1982, State agencies must ascertain if the individual was entitled to a week of EB which began on or after June 1, 1982. If such an individual was paid a week of EB or could have been paid a week of EB which began after June 1, 1982, but was not otherwise eligible, he/she is deemed to have satisfied the requirement of Section 605(2)(B) of the Act and qualifies for a period of eligibility.

For example, an individual's benefit year ended prior to June 1, 1982. The individual is considered to have entitlement to a week of EB for a week which began on or after June 1, 1982, provided the individual's period of eligibility for EB had not ended prior to such week (and he/she had not exhausted EB entitlement prior to such week), even though he/she had not claimed or was not paid EB for such week.

Similarly, an individual was denied benefits during an EB period for refusal of suitable work. He/she then returned to work after the week beginning on or after June 1, 1982, after which, the State triggered "off" extended benefits. Having had remaining EB entitlement on or after June 1, 1982, which could have been paid but for the disqualification, the individual could qualify for a period of eligibility for FSC. Eligibility for FSC then depends on whether he/she purged

ing special dispensation to be requested by Section 202(a)(3)(B) of EUCA.

An individual claiming entitlement to a benefit under EUCAL must have been employed in the State for a period of at least 20 weeks of full-time work or equivalent during the 20 weeks of full-time work or equivalent preceding the filing of the claim.

The provisions of Section 202(a)(3)(B) of EUCA are considered to have been met if an individual claiming a benefit under EUCAL has been employed in the State for a period of at least 20 weeks of full-time work or equivalent during the 20 weeks of full-time work or equivalent preceding the filing of the claim. Accordingly, the provisions of EUCAL may be applied if the individual has been employed in the State for a period of at least 20 weeks of full-time work or equivalent during the 20 weeks of full-time work or equivalent preceding the filing of the claim.

**20 Weeks of Work Requirement.** The 20 weeks of full-time work or equivalent qualifying requirement for entitlement to extended benefits under Section 202(a)(3)(B) of EUCA shall be applied with respect to any individual claiming a week of FSC beginning on or after September 12, 1982, even though the requirement will only apply to EB claimants who file claims for weeks beginning after September 25, 1982. State interpretations on full-time work weeks will apply as in the case of EB. See UIPL No. 1-82.

States which have enacted an alternative test under their UI laws to the 20 weeks of work (1½ times the high quarter or 30 times the weekly benefit amount) test to apply the same standard test to an individual claiming FSC. For those States in which the 20 weeks of work or equivalent requirement is provided under State law, the State should develop a method of this test which will effectively carry out the intent of the law, which is administratively feasible, and which is consistent with UIPL No. 14-81 and Changes.

States must determine a claimant's eligibility under the 20 weeks of work requirement as part of the initial claims process.

**Disqualifications Based on Separation from Work.** Section 202(a)(4) of EUCA requires a State law to provide for disqualification of disqualifications for voluntary leaving, discharge for misconduct or refusal of suitable work or withdrawal from employment before an individual can be eligible for extended benefits. This same provision applies to the payment of FSC.

The law may include an individual who was not in the State for the period of

the 20 weeks of full-time work or equivalent preceding the filing of the claim. The law may also include an individual who was not in the State for the period of the 20 weeks of full-time work or equivalent preceding the filing of the claim. The law may also include an individual who was not in the State for the period of the 20 weeks of full-time work or equivalent preceding the filing of the claim.

must review any nonmonetary determination issued to potentially eligible FSC claimants and determine whether they are qualified for FSC under this provision. Employment for the purpose of terminating a disqualification means service performed in an employer-employee relationship as provided in the State law which would qualify an individual on EB.

In no case may a period of nonemployment be used to terminate a disqualification for the purpose of paying FSC, unless the State law specifically requires new work to purge this denial of benefits. See UIPL No. 14-81.

**6. Actively-Seeking Work Requirement.** The extended benefit requirement to actively seek work under Section 202(a)(3)(A)(ii), EUCA, is also a condition of eligibility for FSC. In accordance with the provisions of 202(a)(3)(E) of EUCA, and individual will be treated as actively engaged in seeking work if:

- The individual has engaged in a systematic and sustained effort to obtain work during such week, and
- The individual provides tangible evidence to the State agency that he/she has engaged in such an effort during such week.

Any disqualification of an individual for failure to actively seek work during a week of FSC will result in a denial of benefits with respect to the week in which such failure occurs and will not end until such individual purges the special disqualification in accordance with Section 202(a)(5)(B) of the EUCA. The total amount required to be earned to purge this disqualification cannot be less than four times the individual's weekly benefit amount. See UIPL No. 14-81.

**7. Suitable Work Provisions.** Provisions required by Section 202(a)(3)(B), EUCA, will be applied to any individual claiming a week of FSC who fails to apply for or accept any offer of suitable work as defined in Section 202(a)(3)(C), EUCA.

The term "suitable work" means, with respect to any individual claiming FSC, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the State law applicable to entitlement for regular

benefits. See UIPL No. 14-81, and Changes.

Paralleling the provisions of Section 202(a)(3)(D), EUCA, FSC shall not be denied under provisions required by Section 202(a)(3)(B), EUCA, to any individual for any week by reason of a failure to accept an offer of, or to apply for, suitable work:

- If the gross average weekly remuneration payable to such individual for the work does not exceed the sum of:
- The individual's weekly benefit amount of FSC. Plus
- The amount (if any) of supplemental unemployment benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week.

- If the position was not offered to such individual in writing or was not listed with the State employment service.
- If such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (D) of Section 202(a)(3), EUCA, or
- If the position pays wages less than the higher of:

- The minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or
- Any applicable State or local minimum wage.

Detailed guidance on the appropriate application of the active search for work and refusal of suitable work provisions of Section 202(a)(3), EUCA, are in GALs 21-81 and 22-81 and UIPL No. 14-81 and Changes.

States will use the appropriate sections of State law when issuing determinations for FSC which are required by the corresponding provisions of EUCA but such determinations shall not be inconsistent with Federal law regardless of the particular provisions of State law.

**D. Weekly Benefit Amount**

**1. Total Unemployment.** The FSC weekly benefit amount payable to an individual for a week of total unemployment will be equal to the individual's weekly benefit amount for regular compensation (including dependents' allowances) payable during such individual's most recent benefit year. If an individual had more than one weekly benefit amount of regular compensation, the SESA will determine the FSC weekly benefit amount in the same manner that it would determine

the weekly extent of benefit payments shall be based on the CFR to be published.

**2. *Interstate Benefit Plan.*** The weekly amount of benefit payable for work of partial duration shall be determined on the basis of the unemployment rate in the State in which the individual resides.

**3. *Maximum FSC Payable.*** The maximum FSC payable in a State shall be:

(a) The weekly amount of benefit payable for work of full duration in the State in which the individual resides; or

(b) The maximum FSC payable in a State, whichever is the lesser.

**4. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**5. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**6. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**7. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**8. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**9. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**10. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

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**12. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**13. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**14. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**15. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**16. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**17. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**18. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**19. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**20. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

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**26. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**27. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**28. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

**29. *Reduction of FSC Payable.*** The maximum FSC payable shall be reduced by the amount of any other benefits payable to the individual.

There is no corresponding minimum benefit period for States which drop below the 4.5 percent trigger rate. Thus, a State may drop to a six-week extension and the following week, if its insured unemployment rate equals or exceeds the 4.5 percent rate, again be in a period of high unemployment during which up to eight weeks of FSC are payable. The State will remain in this high unemployment period and any later one to a minimum of four weeks.

Determinations of the beginning and ending of high unemployment periods shall be made by the head of the State agency, in accordance with these instructions and 20 CFR Part 615. Public notice shall be given of any such determination, and each individual affected thereby shall be given a written notice.

**3. *Computation of FSC payable based on a new benefit year.*** During the life of the FSC program, a small number of FSC claimants may establish new benefit years with a new entitlement to regular benefits and again become exhausted with the meaning of the Act. These individuals' monetary entitlement to FSC will be determined without regard to the amount of FSC they have already received based on their benefit years. Although the Act limits the amount of FSC payable during an individual's period of eligibility, it does not limit the number of eligibility periods an individual may have during the life of the program.

**4. *Beginning of an Extended Benefit Period After the Effective Date of the Act.*** States may begin an extended benefit period after the effective date of the FSC Act. When an extended benefit period begins, the maximum FSC payable increases to ten weeks (providing the maximum FSC payable is not already at ten weeks because of an earlier extended benefit period).

When an extended benefit period begins, the SESEA must, prior to paying FSC for a week of unemployment, determine each person's eligibility for extended benefits, in accordance with State law provisions relating to EB. If an individual has entitlement to extended benefits, such individual is not eligible for FSC. Once an individual has exhausted any entitlement to extended benefits, the individual may receive the remaining balance in his/her FSC account. A new entitlement to FSC is not made since the individual has the same period of eligibility upon which the FSC entitlement was determined.

**5. *Interstate Claimants.*** The extended benefit provisions apply to claims for payment of FSC. The EB provisions do not require claimants to two weeks of extended benefits if they file claims in

an agent State not in an extended benefit period. The two-week limitation applies only to claimants filing for FSC under the Interstate Benefit Payment Plan in agent States that have not entered into or have discontinued an agreement to administer the FSC program. Payment of FSC to individuals filing from such agent States is limited to two weeks regardless of whether or not the agent State is in an Extended Benefit period. The two-week limitation is applied because the agent State is not in an FSC period.

In all other States (where both agent and liable States have entered into an agreement to administer FSC) claimants filing for FSC under the Interstate Benefit Payment Plan shall receive the maximum payable in the liable State.

**6. *Changes in Account.*** If it is later determined as the result of a redetermination or appeal that an individual was entitled to more or less regular or extended benefits under the State law or under 5 U.S.C. Chapter 85, the individual's status as an exhaustee should be redetermined as of the new date of the individual's exhaustion, and an appropriate change shall be made in the individual's FSC account. If the individual is entitled to more or less FSC as a result of a change in the maximum weeks of FSC payable in the State or because of the beginning of an extended benefit period in the State, the appropriate change should be made in the individual's FSC account.

The FSC maximum in a State may change with economic changes. When a State's FSC maximum goes up (six to eight or eight to ten), the maximum payable to all intrastate FSC recipients is increased. An individual who had exhausted six to eight weeks of FSC is now eligible for two to four additional weeks of FSC as long as the new maximum does not exceed 50 percent of the individual's regular benefits. Such changes may occur even though many weeks have elapsed since the individual exhausted initial FSC entitlement.

When a State FSC maximum is reduced (eight to six), the reduced maximum applies to all individuals claiming FSC after the date of the change. Individuals who had not exhausted their eight-week maximum are now terminated at six or seven weeks.

**F. Effect of Special Federal Programs on Eligibility for FSC**

**1. *Trade Readjustment Allowances (TRA).*** Under the 1981 amendments to the Trade Act which became effective in most States for weeks beginning on or after October 1, 1981, the combination of



the State shall proceed with the review. The State shall not be required to provide a written explanation of an application for denial of compensation or priority of claims, or of a suspension or denial of compensation or otherwise.

#### *3. Information for the prompt processing of claims.*

The State shall, in accordance with the provisions of the Federal State Extended Benefit Act, Compensation Act of 1965, and the conditions of the State employment compensation law, make available to claims for and receipt of regular compensation in the State apply to the same extent to claims for payment of FSC in the State as the provisions of the applicable State law which apply to claims for, and payment of FSC include but are not limited to:

1. Claim filing and reporting.
2. Information to individuals as appropriate.
3. Notices to individuals and employers, as appropriate, including advice to each individual of each determination and redetermination of eligibility for entitlement to FSC.
4. Determinations, redeterminations, appeals, and hearings.
5. Disqualification, including suspending income provisions.
6. The Interstate Benefit Payment Plan as a special instruction for interstate claims in section F.5.).
7. The interstate arrangement for combining employment and wages.

#### *4. Claimmaking Procedures*

*a. Notification of Potential FSC Claims.* The SESA will identify individuals who are potentially eligible for FSC benefits, and provide such individuals with appropriate written notification of their potential entitlement to FSC. The liable State will notify its interstate claimants of potential entitlement to FSC.

*b. Intent Claim.* When an individual has an intent FSC claim, the SESA must:

1. Review eligibility for FSC and make an initial determination of eligibility.
2. Fully inform claimant of rights and responsibilities under the EB provisions, and the EB provisions with respect to assessing the claimant's current job prospects.
3. If an individual is registered as "not suitable for work" as defined by UI of the individual's

prospects for obtaining work in

claimant's occupations are not good.

*4. Notification of Responsibility.* FSC claimants must be fully informed of their rights and responsibilities under FSC. Specifically, FSC claimants must be informed of the EB eligibility requirements applicable to FSC. The SESA should follow procedures outlined in GAL 21-81. However, if the claimant receives such information prior to claiming EB, the SESA need only advise the claimant that the same requirements apply to FSC claims.

To the extent possible, SESAs should provide a notice to any potential FSC claimant prior to entering FSC status.

*4. EB Eligibility Requirements—a. Assessing Job Prospects.* As part of the initial claims process, the SESA must assess a claimant's job prospects. If the SESA has recently classified the claimant's job prospects as "good" or "not good," the SESA need only ascertain that the classification is still valid based on any changes in the claimant's circumstances or the local labor market. In assessing job prospects, the SESA should refer to and follow procedures in Section I of GAL 21-81 and the applicable questions and answers in GAL 22-81. Also see UIPL No. 14-81, and Changes.

*b. Applying Active Search for Work Requirements: Referral for Job Placement; Failure to Apply for or Accept Suitable Work.* The extended benefit requirements on active search for work, referral to "suitable work," and the disqualification for failure to apply for or accept suitable work are applicable to claims for FSC. Section III of GAL 21-81 provides procedures for administering these provisions. SESAs should refer to and follow these same procedures for FSC claimants. Also see UIPL No. 14-81, and Changes.

*5. Work Registration.* All FSC claimants must be registered for employment with the SESA. Procedures should be adopted to annotate FSC claim records to insure that claimstakers know whether FSC claimants have been registered for work and, if not, the claimstakers must refer FSC claimants to the job placement staff to be registered for work. Likewise, the work registration form (511) should be annotated to show an individual is an FSC claimant.

It is also important that UI staff correlate the job prospects classification process with the Job Service staff. This will be necessary to ensure that the Job Service is aware of an FSC claimant's current job prospects classification in order that ES-511s can be updated for claimants with poor prospects of returning to work and that referrals can

be made using a wider range of job openings than those related to the FSC claimant's primary DOT code.

*6. Documentation and Reporting of Referral Results.* Job placement staff must notify the claims adjudication staff in writing of:

- a. Failure to respond to mailed call-in and appointment to which the claimant did not appear.
- b. Refusal of referrals to suitable work, and
- c. Failure to appear for a job interview or refusal of an offer of suitable work.

*7. Eligibility Review Program.* It is expected that FSC claimants who have been through eligibility review will continue to receive intensified services in this program.

#### *L. Fraud and Overpayment*

The Act contains specific provisions with respect to fraud and overpayments of FSC benefits.

Provisions of the State law applied to detection and prevention of fraudulent overpayments of FSC will be, as a minimum, commensurate with those applied by the State with respect to regular compensation and which are consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual*, Part V, Sections 7510, et seq.).

*1. Fraudulent Claiming of FSC.* If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact or knowingly has failed or caused another to fail to disclose a material fact, and as a result of such false statement or representation or such nondisclosure the individual has received an amount of FSC benefits to which the individual was not entitled, the individual:

a. Shall be ineligible for further FSC benefits in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation, and

b. shall be subject to prosecution under Section 1001 of Title 18, USC.

Provisions of State law relating to disqualification for fraudulently claiming or receiving a payment of compensation shall apply to claims for and payment of FSC.

When a SESA has sufficient facts to make a prima facie case under the Federal Criminal Code (18 U.S.C. 1001), it will consider criminal prosecution in accordance with the provisions of Section 7560, Part V, *Employment Security Manual*. If prosecution in the Federal Courts is to be recommended,

the matter will be referred to the appropriate office of the Federal Bureau of Investigation (FBI).

In those cases not referred to the FBI for prosecution or if the U.S. Attorney declines prosecution, the SESA may and should prosecute in State Court.

**B. Waiver of Overpayment.** Each individual is entitled to request repayment of any overpayment that he has received away from the State. The individual must request repayment of the SESA within 30 days of the overpayment. The SESA may waive recovery of a non-fraudulent overpayment if it determines that—  
(1) The payment of such FSC benefits is not based on fault on the part of the individual; and

(2) Recovery would be contrary to equity and good conscience.

In determining whether fault exists, the following factors shall be considered:

(1) Whether a statement or representation of a material nature was made by the individual in connection with the application for FSC that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate;

(2) Whether the individual failed or refused another to fail to disclose a material fact in connection with an application for FSC that resulted in the overpayment; and whether the individual knew or should have known of the fact in question;

(3) Whether the individual knew or should have been expected to know that the individual was not entitled to the FSC payment;

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any omission or commission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong.

In the event of an affirmative finding on any of the foregoing factors, recovery of the overpayment shall not be waived.

In determining whether equity and good conscience exists the following factors shall be considered:

(1) Whether the overpayment was the result of a decision on appeal, and whether the State agency had given notice to the individual that the case has been appealed further; and that the individual shall be required to repay the overpayment in the event of a reversal of the decision;

(2) Whether recovery of the

overpayment would be contrary to equity and good conscience.

affirmative finding under paragraph 2(a) of this section with respect to such individual and such overpayment.

In the event of an affirmative finding on either of the foregoing factors, recovery of the overpayment should not be waived. For this purpose an extraordinary financial hardship shall exist if recovery of the overpayment would result directly in the individual's loss of or inability to obtain minimal necessities of food, medicine, and shelter; and extraordinary and lasting financial hardship shall be extraordinary as described above and "lasting" means that the financial hardship may be expected to endure for more than 30 days.

Each State may elect whether to allow waiver of overpayments, and if so it should apply these rules in determining whether a waiver of overpayment shall be granted.

(4) An FSC overpayment may be recovered either by offset or repayment by the individual. The SESA will, during the three-year period after the date the individual received the payment of FSC to which the individual was not entitled, recover the amount to be repaid, or any part thereof.

(a) From any FSC payable under the Act;

(b) From any compensation payable to the individual under any Federal unemployment compensation law administered by the SESA (UCFE, UCX, etc.);

(c) Under any other Federal law administered by the SESA (DUA, RETP, AETP, etc.) which provides for payment of any assistance or allowance with respect to any week of unemployment.

(4) No single deduction, however, may exceed 50 percent of the amount of the payment from which such deduction is made. To the extent permitted under State law, an FSC overpayment may be recovered by offset, within the 50 percent and three-year limitations, from benefits payable under the State unemployment compensation law.

(5) At the end of the three-year limitation, the SESA may remove the overpayment from its accounting record. Although no further active collection efforts by the SESA are required, the SESA should maintain an administrative record during the subsequent three-year period to provide for possible collection through methods other than offset. After the subsequent three-year period, the SESA may dispose of the overpayment record.

(6) Under the Act, no repayment shall be required, and no deduction shall be made, until a determination of overpayment has been made, notice thereof and an opportunity for a fair

hearing has been given to the individual, and the determination has become final.

(7) FSC overpayment recovery shall be enforced by any action or proceeding which may be brought under State or Federal law, unless recovery of the overpayment is waived in accordance with the Act and these instructions.

Overpayments of FSC recovered in any manner shall be credited or returned to the appropriate account of the United States.

(8) FSC payments shall not be used to offset State regular UI or EB overpayments. FSC payments shall be used to recover any existing overpayments made under any Federal unemployment benefit or allowance program administered by the SESA. Determinations under this section, shall be subject to the determination and appeal and hearing provisions of sections 14 and 1.

#### M. Payment to States

Under Section 603 of the Act each State which has entered into an agreement to pay FSC will be paid an amount equal to 100 percent of the amount of FSC which is paid to individuals by the State pursuant to the agreement and in full accordance with the Act and these instructions.

Further, no payment shall be made to any State for FSC to the extent the State is entitled to reimbursement under the provisions of any other Federal law other than the Act, which shall mean and include Chapter 85 of Title 5 of the USC. This means that States will charge the EUCA account for FSC paid to UCFE or UCX claimants.

The paying State on a combined-wage claim will pay all FSC benefits directly, and will not bill transferring States for any share of such benefits paid.

#### N. Records and Reports

1. **Reports.** The SESA will maintain FSC claims and payment data (including data on eligibility, disqualification and appeals) as required by the Employment and Training Administration (ETA). The SESA will report such required data as specified in instructions issued by ETA.

2. **Recordkeeping.** Each SESA will make and maintain records pertaining to the administration of the FSC program as the ETA requires, and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Secretary of Labor or ETA may designate or as may be required by the Act.

#### O. Disclosure of Information

Information in records made and maintained by a State agency in

the State agency shall be required to make such determination, redetermination, or decision within the time specified in paragraph 2 of this section.

(c) If the State agency fails to make such determination, redetermination, or decision within the time specified in paragraph 2 of this section,

(1) the Department shall, at the request of the individual, make such determination, redetermination, or decision within the time specified in paragraph 2 of this section;

(2) the Department shall, at the request of the individual, make such determination, redetermination, or decision within the time specified in paragraph 2 of this section; and

(3) the Department shall, at the request of the individual, make such determination, redetermination, or decision within the time specified in paragraph 2 of this section.

#### Protection of FSC

(a) This section specifically provided in the Act that the right of an individual to FSC shall be protected in these circumstances and to the same extent as the rights of persons to regular compensation are protected under the Act. The time limit for such measures, such as payment of claimants for FSC, however, shall be as follows: assignment, payment of FSC. If a claimant is not paid FSC, the Department shall, at the request of the individual, make such determination, redetermination, or decision within the time specified in paragraph 2 of this section.

#### Appeal of FSC

(b) The Department shall, at the request of the individual, make such determination, redetermination, or decision within the time specified in paragraph 2 of this section. If the Department fails to make such determination, redetermination, or decision within the time specified in paragraph 2 of this section, the Department shall, at the request of the individual, make such determination, redetermination, or decision within the time specified in paragraph 2 of this section. If the Department fails to make such determination, redetermination, or decision within the time specified in paragraph 2 of this section, the Department shall, at the request of the individual, make such determination, redetermination, or decision within the time specified in paragraph 2 of this section.

(c) If the Department fails to make such determination, redetermination, or decision within the time specified in paragraph 2 of this section, the Department shall, at the request of the individual, make such determination, redetermination, or decision within the time specified in paragraph 2 of this section. If the Department fails to make such determination, redetermination, or decision within the time specified in paragraph 2 of this section, the Department shall, at the request of the individual, make such determination, redetermination, or decision within the time specified in paragraph 2 of this section.

(d) If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act for these instructions, the Department may at any time notify the State agency of the Department's view. If the determination, redetermination, or decision in question denies FSC to an individual, the steps outlined in paragraph 2 of this section shall be followed by the State agency. If the determination, redetermination, or decision in question awards FSC to an individual, the benefits are "due" within the meaning of section 404(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), and therefore must be paid promptly to the individual. However, the State agency shall take the steps outlined in paragraph 2 of this section, and payments to the individual may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the individual, and the redetermination action is taken or appeal is filed to obtain a reversal of the award of FSC and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order is issued which affirms the determination, redetermination, or decision awarding FSC or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

(e) If any determination, redetermination, or decision, referred to in paragraph 2 or paragraph 3 of this section is treated as a precedent for any future application for FSC, the Secretary will decide whether the Agreement with the State entered into under the Act shall be terminated.

(f) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or these instructions, including any determination, redetermination, or decision referred to in paragraph 2 or paragraph 3 of this section, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State shall be terminated and whether other action shall be taken to recover such sums for the United States.

(g) A State agency may request reconsideration of a notice issued pursuant to paragraph 2 or paragraph 3 of this section, and shall be given an opportunity to present views and arguments if desired.

(h) Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the absence of a notice issued pursuant to this section.

#### III. Job Placement and Work Test Activities.

As previously indicated, the objectives of the FSC program are to make timely and accurate benefit payments, to assist in the reemployment of FSC claimants, and to apply the same work test applicable under the extended benefits program. To carry out the reemployment and work test objectives, the following requirements are being established for FSC eligibles:

A. All FSC claimants must be fully registered (not partially) and in the active file, and the 511 annotated to show FSC claim status. SESAs must insure that FSC claimants are registered as quickly as is administratively feasible. In all but exceptional cases, the FSC claimant should be registered by no later than the end of the second compensable week.

B. Each State agency shall establish appropriate internal mechanisms and procedures so that all FSC claimants whose prospects for work have been determined to be "not good" are provided at least one reinterview for job placement assistance during the eligibility period—preferably at the outset of the period. The reinterview shall focus on:

1. Reassessment of the claimant's qualifications and updating the application to reflect all relevant work experience and the addition of secondary and tertiary DOT codes as necessary and FSC status.