

**DEPARTMENT OF LABOR****Employment and Training  
Administration****20 CFR Part 604**

RIN 1205-AB33

**Unemployment Compensation—Trust  
Fund Integrity Rule; Birth and  
Adoption Unemployment  
Compensation; Removal of  
Regulations**AGENCY: Employment and Training  
Administration, Labor.

ACTION: Final rule.

**SUMMARY:** The Department of Labor (Department) is issuing this final rule to remove the Birth and Adoption Unemployment Compensation (BAA-UC) regulations. Those regulations permitted an experimental opportunity for states to provide, in the form of unemployment compensation (UC), partial wage replacement for parents taking approved leave or otherwise leaving employment while caring for their newborns or newly-adopted children.

**EFFECTIVE DATE:** This final rule is effective November 10, 2003.

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**SUPPLEMENTARY INFORMATION:****I. Introduction****A. Overview**

On June 13, 2000, the Department published the BAA-UC Final Rule in the **Federal Register** at 65 FR 37210. The rule was codified at 20 CFR Part 604. It implemented an experimental opportunity for state agencies responsible for administering the Federal-State UC program to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. On December 4, 2002, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to remove the BAA-UC regulations in the **Federal Register**. (67 FR 72122 (December 4, 2002).) The NPRM invited the public to comment over a 60-day period, ending February 3, 2003. Comments were accepted by mail and electronic media.

The preamble to the NPRM contained a detailed explanation of the reasons for the removal of the BAA-UC regulations. In order to adequately respond to comments, and to eliminate the need for readers to refer to the NPRM for context, much of the material in the NPRM is repeated in this document.

**B. Background on BAA-UC**

Under BAA-UC, states were permitted, as part of a voluntary experiment, to amend their state UC laws to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. In qualifying for UC, the individual would not have to be able and available (A&A) for work in the sense traditionally used by the Department. Instead, parents of newborns and newly-adopted children would be viewed as meeting the federal A&A requirements (as implemented through state law) under the premise that the parents' long-term attachment to the workforce would be strengthened and promoted by the payment of UC, which would provide some financial support to accompany the introduction of a new child into the family.

As the Department noted during the final rulemaking in 2000, the BAA-UC experiment was "a reversal of our position taken in 1997," when the Department advised a state that UC could not be used in this manner. (65 FR 37212 (June 13, 2000).) The BAA-UC experiment was described as "part of an evolving interpretation of the federal A&A requirements that recognizes practical and economic realities." (*Id.*) Simply stated, the Department interpreted the A&A requirements in a new and different way that emphasized the individual's potential long-term attachment to the workforce. BAA-UC was intended to test whether individuals would be more attached to the workforce, even if their current separation from the workforce was a conscious decision on their part due to personal and family reasons relating to the birth or adoption of a child. Significantly, since the Department made the BAA-UC experiment available in 2000, no state has elected to participate.

Following a review of the BAA-UC Final Rule as part of a Department-wide review of all regulations, the Department announced, in the NPRM, that it proposed to remove the BAA-UC regulations because it had determined that "the BAA-UC experiment is poor policy and a misapplication of federal UC law relating to the A&A requirements." (67 FR 72122 (December

4, 2002).) After thoroughly analyzing the A&A requirement, the Department concluded that "A&A tests involuntary unemployment due to a continuing lack of suitable work" and that the "BAA-UC rule not only failed to recognize this, but is in fact contrary to the A&A requirement." (*Id.* at 72125.)

**C. Effect of Repeal**

To date no state has elected to participate in the BAA-UC experiment. Therefore, terminating the experiment will not result in any state withdrawing benefits it previously granted. The only effect of the removal of the regulations is that it arguably reduces state flexibility because a state could no longer elect to use its unemployment fund to pay BAA-UC. The Department's position on federal law requirements will revert to that in existence before publication of the BAA-UC rule. Thus, a state must require that to be eligible for UC an individual must, among other things, demonstrate current labor force attachment by meeting the A&A requirements. Each state remains free to create a paid family leave-type program using state moneys from sources other than the state's unemployment taxes deposited into its unemployment fund.

**D. Policy Reasons for Repeal**

The UC program is designed to provide temporary wage insurance for individuals who are unemployed due to lack of suitable work. This would generally not be the case for parents who would avail themselves of BAA-UC. Such parents would be out of work because they both initiated their separation from the workforce and are currently unavailable for work; they would have effectively withdrawn from the labor market for a period of time. To the extent that BAA-UC is based on labor force attachment, it is based on an assumption of increased *future* attachment to the labor force. Individuals who take approved leave when an employer is holding a job open for them are not available for that work or other suitable work. As a result, BAA-UC paid to these individuals would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. As such, it would be paid leave, which was not envisioned in the design of the UC program.

We again note that no state has enacted BAA-UC legislation. The limited flexibility provided under BAA-UC may be one factor. In 2002, California passed legislation (enacted Senate Bill 1661; Chapter No. 901) that contains features of BAA-UC, as well as many features beyond the scope of