

for the particular week of the separation.” (67 FR 72124 (December 4, 2002).) There is, simply put, no federal requirement that the initial separation be involuntary for an individual to be eligible for UC; however, the individual must be A&A for suitable employment. Indeed, in the early days of the UC program, many state laws did not contain any provision addressing voluntary separations from employment, but they all had provisions requiring an individual to be A&A for suitable work.

An example may help explain how voluntary leaving provisions are distinct from the A&A requirements. If an individual left work to care for an ill child, certain states will not disqualify that individual for voluntarily leaving employment. However, the individual must still be A&A to be eligible for UC. If caring for the ill child prevents the individual from being available for a new job, the individual will be held ineligible for not meeting the state's A&A requirements because the individual is not involuntarily unemployed due to lack of suitable work. However, after the child no longer needs care and the individual becomes available for work, the individual may immediately commence collecting UC. Thus, this voluntary leaving provision does not affect the requirement that the individual must be A&A.

#### (b) Other Situations

One commenter noted a state law provision relating to short-time compensation (more commonly known as “worksharing”) under which an individual would not be denied UC “by reason of application of provisions relating to availability for work” as evidence that exceptions to the A&A requirement exist. (Under “worksharing,” an employer and its employees agree that the employees will work a reduced work week in lieu of having some employees totally laid-off.) In response, we note that worksharing is expressly permitted by federal law as an exception to the A&A requirements, and that, like temporary lay-offs, the individual must still be available to work for his/her employer. Section 401(d)(1)(C) of Public Law 102-318 provides that, under worksharing, individuals “are not required to meet the availability for work or work search test requirements \* \* \*, but are required to be available for their normal workweek.”

The same commenter noted a state law that permits individuals with a history of part-time work to limit their availability to part-time work under certain conditions. This is consistent

with federal law because those individuals are available for work. They are involuntarily unemployed due to lack of suitable work, which, in their case, is limited to part-time work.

#### (6) Test Requires Changes in State Law

Some commenters expressed concern that our basis for A&A—to test whether an individual's unemployment was involuntary due to lack of suitable work—could result in states having to repeal several current provisions of state law. For example, one commenter noted that the Department “indicates its approval of exceptions [to the A&A requirement] such as temporary lay-offs, jury duty, and other situations that do not comply with the narrow rule the Department” articulated in the NPRM. These provisions of state law were discussed in sections (2) and (3) above as being consistent with the Department's position on A&A. Therefore, the Department's basis for A&A will not require any states to repeal such provisions.

#### (7) Legislative History

Several commenters favoring removal agreed with the Department's analysis that the legislative history supports the A&A requirements. Some commenters opposing removal noted that no specific A&A requirements exist in federal law. One such commenter disagreed with our analysis of legislative history, noting that the “lack of a federal availability requirement is confirmed not only by the plain language of FUTA and SSA, but by their legislative histories, which show that [Congress] expressly declined to impose specific federal requirements for availability” and, further, that Congress could clearly display its intention to create eligibility requirements as it did when it required individuals claiming “extended and emergency benefits to apply for and accept suitable work and to actively engage in such work.” This commenter further noted that even if “widespread involuntary unemployment” was the original impetus for UC provisions of the 1935 SSA, “nothing in federal [UC] law limits states's ability to provide more expansive coverage.” In support of this, the commenter also cited a 1936 Social Security Board statement that “It is desirable that a State law should be at least as broad in its coverage as the Federal act. \* \* \* The State may, of course, go further and adopt a wider coverage.”

Although several members of Congress wrote in opposition to removing the BAA-UC rule, the Department's extensive review of the legislative history and the provisions of

the original 1935 SSA and subsequent enactments indicate a Congressional expectation that individuals must be A&A for suitable work as a condition of benefit eligibility. While the Department agrees that FUTA and SSA do not explicitly set forth an A&A requirement, the Department must, in its supervisory role in the administration of these laws, make reasonable interpretations of the requirements set forth therein. Not all of the statutory requirements are unambiguous. Thus, although a requirement may not be explicit, it may be implicit, especially when viewed in the light of the legislative history. Further, although the states are free “to provide more expansive coverage” than that contemplated in these federal laws, they are nevertheless constrained by the requirements of this legislation as interpreted by the Department. The Department's construction of an implicit federal A&A requirement is reasonable based on the statutory language, the Social Security Board's contemporaneous interpretation of this language, the purpose of the UC program as set forth in the legislative history, and subsequent acts of Congress, discussed below.

In subsequent enactments, Congress has acted several times to reaffirm that UC is payable only to individuals who are able and available for work. When Congress first enacted a provision requiring the reduction of UC due to receipt of retirement pay, it explained that it was establishing a “uniform rule” to address the fact that some recipients of these retirement payments “have actually withdrawn from the labor force,” that is, are not A&A. (S. Rep. No. 1265, 94th Cong. 2d Sess. 22 (1976).) In 1993, Congress required that states refer individuals likely to exhaust UC to reemployment services and deny UC to individuals who failed to participate in these services. (Sections 303(a)(10) and (j), SSA.) This reflected Congress's interest in helping UC claimants get back to work, especially those expected to have the hardest time returning to work quickly, and its willingness to deny UC to those individuals unwilling to take positive steps toward reemployment. Providing reemployment services to individuals who are not able or willing to accept employment (that is, who are not A&A) would waste resources on some while denying reemployment services to others who could benefit.

Congress has also created several extensions of UC to address “widespread involuntary unemployment” during economic downturns. In Public Law 91-373, it created the permanent federal-state