TRAINING AND EMPLOYMENT NOTICE	NO. 13-10
	DATE November 8, 2010

TO: STATE WORKFORCE AGENCIES
STATEWORKFORCE LIAISONS

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Promulgation of Revisions to 20 CFR Part 606 Tax Credits Under the Federal Unemployment Tax Act; Advances Under Title XII of the Social Security Act: Federal-State Unemployment Compensation Program; Funding Goals for Interest-Free Advances

1. Purpose. To announce amendment to the regulations governing the criteria states must meet to obtain interest-free advances to pay Unemployment Compensation (UC) when their Unemployment Trust Fund (UTF) accounts have insufficient funds to pay benefits.

2. References. Balanced Budget Act of 1997 (Public Law 105-33, section 5404); Social Security Act, Title XII, sec. 1202(b)(2)(C)(42U.S.C. 1322(b)(2)(c)); 20 CFR Part 606, Subparts A 606.3, C 606.20 through 606.22, and D 606.32.

3. Background. UC is generally funded by employer contributions (taxes) paid to a state. The state deposits these contributions immediately upon receipt into its account in the Federal UTF maintained by the Bureau of Public Debt in the Department of the Treasury. Section 1202 of the SSA (42 U.S.C. 1322) permits a state to obtain repayable advances (commonly called loans) from the Federal Unemployment Account (FUA) for its account in the UTF to pay UC when the account reaches a balance of zero. These advances are interest-bearing, except for certain short-term advances, which are commonly called “cash-flow loans.” (The American Recovery and Reinvestment Act temporarily suspended payment and accrual of interest from February 17, 2009, through December 31, 2010.) Interest-free advances were originally permitted under sec. 1202(b)(2) of the SSA (42 U.S.C. 1322(b)(2)) if:

(1) The advances made during a calendar year are repaid in full before the end of September 30 of the same calendar year; and

(2) No additional advance is made during the same calendar year and after September 30.

The Balanced Budget Act of 1997 added a third criterion: that a state also meet funding goals relating to its account in the UTF, established under regulations issued by the Secretary of Labor. The Federal-State Unemployment Compensation Program Funding Goals for Interest-Free Advances Final Rule (Final Rule) implements this third criterion.

4. New Regulation Provisions. The Final Rule (75 Fed.Reg. 57146, September 17, 2010) amended 20 CFR Part 606 to add a third criterion to the requirements for interest-free advances to states from the FUA for the purpose of paying UC. This Final Rule may be found at http://edocket.access.gpo.gov/2010/pdf/2010-22926.pdf. Specifically, the Final Rule amends sections 606.20, 606.21, 606.22, and 606.32 to add the third criterion which has two components. The first component requires a state to meet a measure of UTF account balance adequacy in at least one of the five calendar years before the calendar year in which the advance was obtained. The measure used is the Average High Cost Multiple (AHCM), which represents the number of years a state's account in the UTF could pay benefits at a rate equivalent to the benefits paid during an average recession without receiving any additional revenue. The Final Rule requires a state to have funds in its UTF account that would result in an AHCM of at least 1.00 at the end of one of the five calendar years prior to the year in which the potentially interest-free advance was taken. This component ensures that the state had made sufficient efforts to achieve solvency before the need for an advance arose.

The second component requires a state to meet two tax effort criteria for each year after the solvency criterion is met, up to the year in which the advance was obtained. This component ensures that the state made reasonable efforts through its taxing authority to maintain solvency even though its funds were depleted. To determine whether a state had no significant tax reduction in one of the years between the last year that the trust fund solvency measure was met and the year in which the potentially interest-free advance was received, the Final Rule establishes two criteria:

1) The average tax rate (State Unemployment Insurance (UI) taxes collected during the year divided by total UI-covered wages paid during the year) in each year must be at least 80 percent of the prior year's rate; and

2) The average tax rate in each year must be at least 75 percent of the average benefit cost ratio over the preceding five years, where the benefit cost ratio for a five-year period is defined as the amount of benefits paid for the five-year period divided by the total UI-covered wages paid for the five-year period.

In consideration of the comments received on the Notice of Proposed Rule Making, implementation of the Final Rule has been delayed and the AHCM solvency requirements will be phased in. For calendar year 2014, to obtain an interest-free advance, a state must meet the requirements of current law and the Final Rule, except that instead of an AHCM of 1.00, the trust fund solvency threshold will be an AHCM of 0.50. For each of the following five years, the AHCM solvency threshold will be increased by 0.10 until it reaches 1.00 for calendar year 2019 when it is fully phased in.

5. Webinar. A webinar on the Final Rule for stakeholders is in the planning stages and details will be announced when dates have been selected.

6. Action Requested. State Administrators are requested to provide this information to appropriate staff.

7. Inquiries. Inquiries should be directed to your Regional Office.