

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL OUI /DFAS
	DATE September 7, 2011

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 29-11

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Payment of Interest on Title XII Advances

1. Purpose. To provide states with instructions for payment of interest due on Title XII advances at the end of each Federal fiscal year and to explain the consequences to the states of failing to timely pay interest due.

2. References. Sections 303(c)(3) and 1202(b), Social Security Act (SSA); Section 3304(a)(17), Federal Unemployment Tax Act (FUTA); 20 CFR parts 601 and 606; Unemployment Insurance Program Letter (UIPL) Nos. 30-86; 38-87; 58-88; and 05-93.

3. Background. This UIPL supersedes UIPL No. 05-93 on the same subject. Section 1202(b)(3)(A) of the SSA requires that interest due on Title XII advances made during a Federal fiscal year must be paid before the first day of the following Federal fiscal year. Thus, any interest payments due must be paid in full by September 30. However, Title XII, SSA, includes some exceptions to the interest accrual and payment requirements if states meet specific requirements. These exceptions are as follows:

- a. Section 1202(b)(3)(B), SSA, and 20 CFR 606.40 provide that a state may defer the interest due and payable on advances made during the last 5 months of any Federal fiscal year until the last day of the succeeding calendar year. However, interest will accrue on the deferred interest until it is paid.
- b. Section 1202(b)(2), SSA, and 20 CFR 606.32(b) provide that no interest is due on advances made January 1 through September 30 and repaid in full before October 1 in the same calendar year provided no additional advances are obtained before January 1 of the succeeding calendar year. Additionally, beginning in 2014, the state must meet certain funding goals. If an additional Title XII advance is obtained after September 30, and within the same calendar year, interest accruing through September 30 is due and payable the day after the day that first additional advance is taken, except that payment of interest on advances made after May 1 may be deferred as previously mentioned.

RESCISSIONS Rescinds UIPL No. 05-93	EXPIRATION DATE Continuing
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- c. Section 1202(b)(3)(C), SSA, and 20 CFR 606.41 provide that a state may defer 75 percent of the interest due before October 1 when the state's insured unemployment rate equals or exceeds 7.5 percent for the first six months of the preceding calendar year. One-third of the remaining interest must be paid in each of the three years following the year in which the deferral was granted. If a state defers an interest payment under this provision, the interest does not accrue interest during the deferral period.
- d. Section 1202(b)(9), SSA, and 20 CFR 606.42 provide that a state may defer the payment of interest due before October 1, for a period not to exceed nine months, if the total unemployment rate equals or exceeds 13.5 percent for the most recent twelve-month period before such October 1 for which data is available. If a state defers an interest payment under this provision, the interest does not accrue interest during the deferral period.

The rate of interest earned by the Unemployment Trust Fund (UTF) for the fourth quarter of the previous calendar year is the rate of interest used for calculating interest due and payable for the entire calendar year. Any interest due from previous years will also be included in the amount due, based on the applicable rate of interest.

- 4. Source of Funds/Governor's Letter.** Section 1202(b)(5), SSA, provides that interest required to be paid shall not be paid (directly or indirectly) by a state from amounts in its unemployment fund. If the Secretary of Labor (Secretary) determines that any state action results in the payment of such interest directly or indirectly (by an equivalent reduction in state unemployment taxes or otherwise) from such unemployment fund, the Secretary shall not certify such state's unemployment compensation law under §3304, FUTA. Such non-certification shall be made in accordance with section 3304(c), FUTA, and 20 CFR 601.5.

Section 303(c)(3), SSA, and 3304(a)(17), FUTA, also prohibit payment of interest directly or indirectly from the state's unemployment fund. UIPL No. 58-88 provides additional information on acceptable funding sources. It states that payment of interest on Title XII advances from any state fund other than the state unemployment fund is not prohibited by Federal law even if state law requires or permits excess amounts in that fund to be transferred to the unemployment fund. This includes penalty and interest special funds that have been established under state law for purposes including the payment of interest on Title XII advances.

In accordance with Federal law, the Secretary must determine if the funds used for payment of interest were amounts taken directly or indirectly from state unemployment funds. In order for the Secretary to make this determination, the state official who makes the payment of interest at the close of the fiscal year must provide a letter to the Secretary by September 30, identifying the funding source to be used for the payment of interest and the statutory basis for the establishment and use of such funds for this purpose. If the Governor has delegated authority to request and repay advances, the delegated official may submit the letter providing information about the source of funds.

- 5. Interest Calculation, Billing Process, and Timely Payment of Interest.** The U.S. Department of Treasury (Treasury) established the following procedures for interest calculation and billing.

- a. Treasury Calculation and Billing of Interest Due. September 16 is generally the cut-off date for the calculation of interest due. Interest is calculated by Treasury on the outstanding balance of interest-bearing Title XII advances as of the close of business on that day and projected through September 30. On the first business day following September 16th, this amount will be billed to the states as the amount of interest due and payable on September 30. Bills will be sent to state officials authorized to request Title XII advances and repayments and include a general description of how the billed amount was computed.

Projection of interest by Treasury assumes no further advances or repayment after the cut-off date and through September 30. If a state receives additional advances or makes repayments after the cut-off date, the amount billed by the Treasury must be adjusted by the state workforce agency (SWA) in accordance with these procedures:

1. Calculate the daily interest rate by dividing the annual rate of interest charged for Title XII advances by 365 (366 in a leap year).
2. For each day after the cut-off date through September 30, calculate the amount by which the advance balance either exceeds or falls below the advance balance on the cut-off date.
3. Sum the results from Step 2 (note the result could be a negative number) and multiply that amount by the daily interest rate calculated in Step 1.
4. The result of Step 3 should be added to the interest amount billed by Treasury to obtain the adjusted interest payment.

Any adjustment to the amount billed by Treasury must be documented and substantiated in an email to the Trust Fund Management Branch of the Treasury (see contact information below). This email must immediately follow the interest payment. Treasury will verify the calculation, transactions and adjustments and advise the state if further action is required. Accuracy in the calculation of adjustments by SWAs is essential. If Treasury determines that a state paid less than required, Treasury will notify within two business days the state official authorized to request Title XII advances and repayments and the OUI Administrator. In that event, sections 3301(a)(17), FUTA, and 303(c)(3) and 1202(b)(5), SSA, provide for the loss of employer tax credits and administrative grants. If Treasury determines that a state has paid more than required, for example pays the amount billed, but the amount billed is erroneously high, Treasury would refund the difference.

Treasury's Title XII Advances Activity Schedule Web site, showing the annual interest rate used in Treasury's calculations, outstanding advance balance and interest owed can be found by following this link:

http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiesched.htm

After the cut-off date, the Web site will include a column projecting interest due on September 30 based on the latest transactions.

- b. Timely Payment of Interest. States must wire-transfer interest payments to the Federal Reserve Bank (FRB) of New York. The payments should be transferred in a fashion similar to that of normal UTF deposits, with the exception that the source of

the funds being sent must be an account outside of the UTF. State agencies will specify on the memorandum line that the funds are for “Payment of Title XII interest.” The wire-transfers must be received by the FRB of New York no later than 5:00 p.m. Eastern Daylight Time (EDT) on September 30. Any interest received after that cut-off time will be considered paid the next business day and delinquent.

Whenever the last day of the Federal fiscal year falls on a Saturday or Sunday, any interest due and payable no later than September 30 must be received by the FRB of New York on or before the preceding Friday by 5:00 p.m. (EDT).

6. Treasury Contacts.

- a. The billing notice to the states will include the name, email address, and telephone number of a contact person in the Trust Fund Management Branch of the Treasury. These notices will include detailed instructions for SWAs to follow to pay the interest amount due and payable on or before September 30.
- b. Treasury staff is available at (304) 480-5121 for consultation with SWAs during normal business hours to verify loans, repayments, and interest charges. Correspondence to the Treasury should be via email to: Manager, Trust Fund Management Branch at: UTF@bpd.treas.gov.

7. Failure to Pay Interest Timely. When a state accepts a Title XII advance, it takes the responsibility to pay all interest when due. Failure to do so can lead to conformity/substantial compliance proceedings which could result in loss of FUTA tax credits for employers in the state for the year the interest payment is not made timely, and loss of unemployment compensation (UC) administrative funding under Title III, SSA, for the time period during which interest is outstanding. Interest will be charged on the outstanding interest at the rate paid on deposits in the UTF until payment is made.

If a state does not pay interest due on or before September 30, and interest relief provisions in subpart E of 20 CFR part 606 do not apply, the Secretary of Labor may commence proceedings, offering the state an opportunity for a hearing. A state may appeal the outcome of such a hearing. If the state is found out of conformity or substantial compliance at the conclusion of the proceedings, employers will be assessed the full FUTA tax for the taxable year in which the interest was not paid timely. None of the FUTA tax for the year will apply to the state’s outstanding Title XII advance. In addition, the state would be required to return any UC administrative grants allocated for the period during which interest was not paid, pay interest on the unpaid interest, and would not be eligible for additional UC administrative grants until all interest is paid.

8. Action Requested. SWA Administrators should:

- a. Advise the appropriate individuals of this directive;
- b. Assure that any interest due and payable on or before September 30 (or at any later time) is paid timely and in full and in accordance with instructions provided by the Treasury and Federal law requirements; and

- c. Advise the Governor of the potential liability for the payment of interest due on Title XII advances at the close of the Federal fiscal year, and that a letter signed by the Governor or his/her delegate must be sent to the Secretary on or before September 30, containing the following information:
 1. Identification and description of the funding source to be used for the payment of interest that becomes due and payable prior to the beginning of the succeeding Federal fiscal year; and
 2. The statutory basis for the establishment and use of such funds.

Mail this letter to:

U.S. Department of Labor
Attention: Office of Unemployment Insurance
Room S4524
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The SWA should send a copy to the appropriate Regional Office.

9. Inquiries. Direct inquiries to the appropriate Regional Office.