U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

APR 21 2009

The Honorable Kelly Skidmore
7100 West Camino Real, Suite 205
Boca Raton, Florida 33433

Dear Representative Skidmore:

I am writing in response to your letter regarding whether the Department of Labor would seek to reclaim Unemployment Insurance (UI) Modernization Incentive Payments if a state repealed the provisions of its law that qualified it for the Modernization Payment.

Unemployment Insurance Program Letter No. 14-09, Change 1, which was issued March 19, 2009, formally stated the Department of Labor's position regarding what happens when a state repeals any provision that qualified it for a UI Modernization payment. Specifically, the UIPL provided that:

> If a state eventually decides to repeal or modify any of these provisions, it may do so, and it will not be required to return any incentive payments. However, in providing the incentive payments, Congress clearly intended to support states that had already adopted certain eligibility provisions and to expand eligibility to additional beneficiaries by encouraging other states to adopt these provisions. By specifying that the provisions must be in effect as permanent law, Congress also made clear its intention that the benefit expansions not be transitory. While states are free to change or repeal the provisions on which modernization payments were based subsequent to receipt of incentive payments, Congress and the Department rely on states' good faith in adopting the eligibility criteria . . .

Thus, there is no requirement that the state return any money if it later repeals the provisions that qualified it for the UI Modernization Incentive payment.

I have enclosed a copy of UIPL 14-01, Change 1. It is also available at: http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2732.

I hope this explains the Department's position. If you have any questions, please do not hesitate to call me at (202) 693-2700.

Sincerely,

Douglas F. Small
Deputy Assistant Secretary

Enclosure

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	**CLASSIFICATION** UC Incentive Payments
	CORRESPONDENCE SYMBOL DL
	DATE March 19, 2009

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER No. 14-09, Change 1

TO: STATE WORKFORCE AGENCIES

FROM: DOUGLAS F. SMALL
Deputy Assistant Secretary

SUBJECT: Special Transfers for Unemployment Compensation Modernization and Administration and Relief from Interest on Advances

1. Purpose. To provide additional guidance to states concerning unemployment compensation (UC) modernization incentive payments, the recent special administrative transfers, and to correct guidance related to relief from interest on advances to state unemployment funds.

2. References. The Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of Public Law No. 111-5, enacted February 17, 2009; the Social Security Act (SSA); the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letter (UIPL) No. 14-09.

3. Background. UIPL No. 14-09 provided guidance to states on the UC provisions of Public Law 111-5, including how to qualify for UC modernization payments. This UIPL, using a Question and Answer (Q&A) format, provides, among other things:

- Additional guidance concerning applications for UC modernization incentive payments and on using a training benefit provision to qualify for such payments.
- Additional guidance related to the special administrative transfer.
- A correction to earlier guidance related to relief from interest on advances.

4. Action. State administrators should distribute this advisory to appropriate staff.

5. Inquiries. Questions should be addressed to your Regional Office.

RESCISSIONS None	**EXPIRATION DATE** Continuing

6. Attachment. QUESTIONS AND ANSWERS

Attachment

QUESTIONS AND ANSWERS

UC MODERNIZATION - APPLICATIONS UNDER "PERMANENT" LAWS

CH 1-1. Question. UIPL No. 14-09 provides that applications for incentive payments should only be made under provisions of state laws that are currently in effect *as permanent law* and not subject to discontinuation. Does this mean that my state may never repeal any of the provisions that qualified it for a UC Modernization payment?

Answer: No. If a state eventually decides to repeal or modify any of these provisions, it may do so, and it will not be required to return any incentive payments. However, in providing the incentive payments, Congress clearly intended to support states that had already adopted certain eligibility provisions and to expand eligibility to additional beneficiaries by encouraging other states to adopt these provisions. By specifying that the provisions must be in effect as permanent law, Congress also made clear its intention that the benefit expansions not be transitory. While states are free to change or repeal the provisions on which modernization payments were based subsequent to receipt of incentive payments, Congress and the Department rely on states' good faith in adopting the eligibility criteria, and the application must attest to this good faith as required by the following Q&A.

CH 1-2. Question: Are there any changes to the application procedure?

Answer: Yes. Each state's application for incentive payments must contain a certification that the application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which the application is based.

UC MODERNIZATION - TRAINING BENEFITS

CH 1-3. Question. May my state establish a limitation on when the individual must enroll in training to be eligible for the training benefit?

Answer: Yes. As a general matter, individuals who were separated from declining occupations or businesses reducing operations, and who would benefit from job training, should be placed in appropriate training as soon as possible. A state law would qualify for certification if it provided that an individual must be enrolled in training no later than the end of the benefit year established with respect to the separation that makes the individual eligible for the training benefit. (That is, a separation from a declining occupation, or a separation due to a permanent reduction of operations at the individual's place of employment.) A state may provide for a longer period of time, but its application would not be certified if it provided for a period of time ending prior to the end of the individuals' benefit year.

States adopting this limitation must notify individuals of the limitation at the time the state approves their initial claims.

CH 1-4. Question. Q&A III-24 in UIPL No. 14-09 provides that eligibility for the training benefit may *not* be terminated by the expiration of a benefit year. Does this mean that my state may set no outside limits on payment of the training benefit?

Answer: No. Q&A III-24 was intended to assure that an individual enrolled and making satisfactory progress in training did not have eligibility for the training benefit terminated because the benefit year ended. A state may, however, terminate an individual's training benefit after the individual has been provided a reasonable period to collect the entire training benefit. A state law would qualify for certification if it provided that no training benefits are payable one year following the end of the benefit year. If a state adopts a shorter termination date, its application must justify why the date is reasonable.

CH 1–5. Question. An individual voluntarily quit a job. May my law deny this individual the training benefit?

Answer. The answer depends upon the facts. Section 903(f)(3)(C)(ii), SSA, as amended, provides that the training benefit is payable to an individual who was either "separated from a declining occupation, or [was] involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment . . . ." Since these two conditions are in the disjunctive, a state must pay the training benefit if a claimant meets either one. Accordingly, the state must pay the training benefit to an individual who voluntarily quit a job in a "declining occupation," because Federal law does not condition eligibility on the cause of the separation where the separation is from a declining occupation. Further, the state must pay the benefit where the individual was "involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment . . . ." However, the state may deny the benefit where neither condition is met: an individual voluntarily quit a job and the job was not in a declining occupation.

SPECIAL ADMINISTRATIVE TRANSFERS

CH 1-6. Question: Section 903(g)(3)(C) of the SSA provides that my state's share of the $500 million special administrative transfer is available for, among other things, "improvement of unemployment benefit and tax operations, including responding to increased demand for unemployment compensation." Does this mean that my state may use this money to fund the hiring of additional staff due to increased workload?

Answer: Yes. Adding staff to respond to workload is "responding to increased demand for unemployment compensation."

CH 1-7. Question: May my state use its share of the $500 million special administrative

transfer to pay costs individuals might otherwise incur in using their UC debit cards?

Answer: Yes. Reducing costs to individuals in accessing their UC payments is an "improvement" in UC benefit operations because it facilitates the payment of benefits.

CH 1-8. Question: When was the $500 million special administrative distribution transferred to states?

Answer: March 2, 2009.

REPORTING

CH 1-9. Question: Where should transactions involving UC modernization incentive payments and the $500 million special administrative distribution be reported?

Answer: The transfer of any incentive payments and the $500 million special administrative funds was authorized by Title IX of the SSA, as amended. As such, transactions involving these funds should be reported on the ETA 8403 Summary of Financial Transaction – Title IX Funds as well as on lines 15 and 44 of the ETA 2112, UI Financial Transaction Summary report. (OMB Numbers 1205-0154 and 1205-0154.)

INTEREST ON TITLE XII ADVANCES

CH 1-10. Question: How did the amendments made by Section 2004 of Public Law 111-5 affect interest due on Title XII advances?

Answer: Section 2004 added new paragraph (10) to Section 1202(b), SSA:

> (10)(A) With respect to the period beginning on the date of enactment of this paragraph and ending on December 31, 2010—
> (i) any interest payment otherwise due from a State under this subsection during such period shall be deemed to have been made by the State; and
> (ii) no interest shall accrue *during such period* on any advance or advances made under section 1201 to a State.
> (B) The provisions of subparagraph (A) shall have no effect on the requirement for interest payments under this subsection after the period described in such subparagraph or on the accrual of interest under this subsection after such period.
> [Emphasis added.]

Under this new paragraph, any interest payment due during the period beginning on the date of enactment (that is, beginning February 17, 2009) and ending on December 31, 2010, shall be "deemed to have been" paid by the state. This effectively waives all interest due during this period. Further, no interest accrues on any advance or advances during this period.

This Q&A supersedes Q&A V-1 of UIPL 14-09 and corrects the text of the amendment found on page 4 of Attachment VI to UIPL 14-09.

CH 1-11. Question: Will interest accrue on advances made prior to the date of enactment during the period February 17, 2009 through December 31, 2010?

Answer: No. As discussed in the previous Q&A, no interest will accrue on advances during the period. This Q&A supersedes Q&A V-2 of UIPL No. 14-09.

CH 1-12. Question: How is interest after December 31, 2010, determined?

Answer: The normal rules for determining the amounts of interest accrued and the dates interest is due will again apply. This response is the same as Q&A V-3 of UIPL No. 14-09.