

**Modernization Incentive Payments – Overview**

**IN GENERAL**

Section 2003(a) of Public Law 111-5 added new subsection (f) to Section 903, SSA, to provide for incentive payments to states.

These incentive payments are calculated in the same manner as a “Reed Act” distribution. This means each state’s share is based on its proportionate share of FUTA taxable wages multiplied by the \$7 billion authorized by the amendments. For purposes of computing each state’s proportionate share, the Secretary of Labor will use the taxable wages that would have been used for calculating any Reed Act distribution occurring on October 1, 2008. As provided by Section 903(f)(1)(B), SSA, tax year 2007 data is used for determining each state’s share.

A state’s share will be reserved in the Federal Unemployment Account (FUA) in the UTF for purposes of making incentive payments. As of the close of Federal fiscal year 2011 (that is, September 30, 2011), this limitation expires, and any unused amounts again become available for any FUA use.

A state’s eligibility for its maximum incentive payment is conditioned on its law containing specific provisions:

- To obtain the first one-third of its share, the state law must provide for either a base period that uses recent wages or an alternative base period (ABP) using recent wages. This “base period provision” is discussed in Attachment II.
- If a state qualifies under this base period provision, it may obtain the remaining two-thirds if its state law contains two of four options related to benefit eligibility. These options are discussed in Attachment III.

**STATE APPLICATIONS**

In General. The state must apply to the Department of Labor to receive any incentive payment. A complete application must document which provisions of state law meet the requirements for obtaining an incentive payment as interpreted by this UIPL. The application must also describe how the state intends to use any incentive payment to improve or strengthen the state’s UC program. Attachment II discusses what constitutes a complete application for purposes of the base period provision and Attachment III discusses what constitutes a complete application for purposes of the other benefit eligibility provisions.

Applications are to be signed by the state agency administrator and addressed to:

Cheryl Atkinson  
Administrator  
Office of Workforce Security  
200 Constitution Avenue NW  
Room S-4231  
Washington, DC 20210

States may submit applications by mail, fax, or e-mail. States may fax applications to 202-693-2874 to the attention of the Division of UC Legislation. E-mail submissions should be sent to [Atkinson.Cheryl@dol.gov](mailto:Atkinson.Cheryl@dol.gov) with a cc to [Hildebrand.Gerard@dol.gov](mailto:Hildebrand.Gerard@dol.gov). Copies should be provided to the appropriate Regional Office. For purposes of determining the date of receipt (as described immediately below), the date of receipt in the National Office will be used.

Review Process. Within 30 days of receipt by the Department of a state's complete application, the state will be notified whether it qualifies for an incentive payment. If it does, the Secretary of Treasury will transfer the amount of the incentive payment within seven days of receipt of the Department's certification. Since all incentive payments must be made before October 1, 2011, and since the Department must have adequate time to review any application, all applications must be received by the Department no later than August 22, 2011.

To expedite processing of applications and distribution of incentive payments to the states, the Department is providing for a two-tiered application process under which a state may make one application regarding the base period provisions and a separate application regarding the other benefit eligibility provisions. Nothing prohibits states from making a single application. However, since the Department anticipates relatively swift action on base period applications, it may be advantageous for states to make two applications.

State Law Status. Applications should only be made under provisions of state laws that are currently in effect *as permanent law* and not subject to discontinuation. This means that the provision is not subject to any condition – such as an expiration date, the balance in the state's unemployment fund, or a legislative appropriation – that might prevent the provision from becoming effective, or that might suspend, discontinue, or nullify it.

There is one exception to this limitation. In some cases, a state might enact a new provision of law to qualify for the incentive payment, but delay its effective date due to implementation requirements. In these cases, if the state law provision takes effect within 12 months of the date of the Secretary of Labor's certification, then the provision will be considered to be in effect as of the date of the Secretary's certification to the Secretary of Treasury. In the case of a provision that is not effective until more than 12 months (which may be the case with ABP provisions) the state should time its application so that the Secretary's certification will be made no more than 12 months prior to its law's effective date. Thus, for example, since the Secretary must rule on any application within 30 days, the application should be submitted no more than 13 months before

the state law's effective date. Note, however, as discussed above, the Department will not consider applications received after August 22, 2011. As a result, the latest effective date of a provision must be on or before September 21, 2012.

## **RECEIPT AND USE OF INCENTIVE PAYMENTS**

Following the Secretary's certification for an incentive payment, the entire amount certified will be transferred to the state's account in the UTF. A state may use its incentive payment: (1) to pay UC (including dependents' allowances); or (2) upon appropriation of its state legislature, to pay UC and employment service administrative costs. The conditions for administrative use of the incentive payment are the same as those applicable to the \$8 billion Reed Act distribution made in 2002. Refer to Q&As 9 through 19 and Q&A 21 in Attachment I to TEG 18-01 for guidance. Like the \$8 billion Reed Act distribution, there is no time limit on the use of the incentive payment for benefit or administrative purposes. Incentive payments available for the payment of UC must, however, be expended before the state may obtain an advance to pay UC under Title XII, SSA.

## **PAPERWORK REDUCTION ACT (PRA) STATEMENT**

The public reporting burden for this collection of information is estimated to average approximately eight hours per response including time for gathering and maintaining the data needed to complete the required disclosure.

This UIPL contains a new collection of information in the form of an application for UC Modernization Incentive Payments. According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department is planning to submit an Information Collection Request (ICR) to OMB requesting a new OMB Control Number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. § 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. § 3512. The Department will notify states of OMB's decision upon review of the Department's ICR, including any changes that may result from this review process.