

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION Title XII/Reed Act
	CORRESPONDENCE SYMBOL DL/DFAS
	DATE July 16, 2009

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER No. 32-09

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Title XII Advances - Whether Amounts Are Available for the Payment of Benefits and the Establishment of Administrative Subaccounts

1. Purpose. To (1) advise states of the Department of Labor’s (Department’s) revised position for determining if amounts are available for the payment of unemployment compensation (UC) for purposes of obtaining a Title XII advance and to (2) provide procedures for establishing Administrative Subaccounts in the state’s account in the Unemployment Trust Fund (UTF).
2. References. Title II of Division B of Public Law No. 111-5, the American Recovery and Readjustment Act (the Recovery Act), enacted February 17, 2009; Titles IX and XII of the Social Security Act (SSA); Unemployment Insurance Program Letter (UIPL) No. 39-97; UIPL No. 44-97; UIPL No. 14-09; Training and Employment Guidance Letter (TEGL) No. 18-01; Employment and Training (ET) Handbook No. 401, and OMB Control No. 1205-0199.
3. Background. Section 1201 of the SSA provides for “Title XII advances” to states that have depleted their unemployment funds. In determining the amount of any advance, the Department must “[take] into account all other amounts that will be available in the State’s unemployment fund for the payment of” UC. (Section 1201(a)(3)(B), SSA.) UIPL No. 39-97 described the Department’s position on which state unemployment funds are “available” for the payment of UC and which are “unavailable.” It also provided procedures to set aside funds deemed “unavailable” in a “Subaccount” in the state’s account in the UTF, where those funds would not be “tak[en] into account” in determining the amount of an advance.

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UIPL No. 39-97 took the position that all unemployment funds are “available” for the payment of UC except for certain “validly obligated” Reed Act funds, because only valid obligations rendered funds “unavailable” for the payment of benefits. In light of questions about the use of UC Modernization Incentive Payments (OMB Control NO. 1205-0474) made under the Recovery Act, which are subject to most of the rules applicable to Reed Act funds, the Department has re-examined its position that valid obligations are required to render unemployment funds “unavailable.” This UIPL is issued to reflect the Department’s revised position. It supersedes items C.2 and C.3 of Attachment I to UIPL No. 39-97 and any other portions of such UIPL which conflict with this UIPL.

4. Scope. This UIPL applies only to those funds which the state has the option of using either for the payment of benefits or for certain permissible administrative expenses. Funds that may be used either for the payment of benefits or administration fall into three categories:

- Traditional Reed Act distributions made to states in the 1950s and in October 1998, under the provisions of Section 903(a), SSA. Under Section 903(c)(2), SSA, these distributions may be used only for the payment of UC unless the state legislature appropriates some or all of such funds for the administration of its UC law or public employment offices. (See UIPL No. 39-97 for more details.)
- The \$8 billion Reed Act distribution made on March 13, 2002, under Section 903(d), SSA. Congress labeled this transfer a Reed Act distribution although it differed from traditional Reed Act distributions in several ways. Like traditional Reed Act distributions, it gives states the option of using the funds only for the payment of UC or for certain administrative purposes, if appropriated by the state’s legislature. (See TEGL No. 18-01 for more details. The state appropriation must meet the same requirements as those required for a traditional Reed Act appropriation under Section 903(a), SSA, except that there is no deadline by which the appropriated amounts must be obligated.)
- Up to \$7 billion in UC Modernization Incentive Payments which are provided to qualifying states under the Recovery Act. Like the above Reed Act distributions, a qualifying state may use its Incentive Payment for administrative purposes, if appropriated by the state’s legislature. (See UIPL No. 14-09 for more details. The state appropriation must meet the same requirements as for the 2002 Reed Act distribution.)

This UIPL does not apply to the following distributions which may be used only for administrative purposes:

- The “special” Reed Act distributions made in the month of October in each of 1999, 2000, and 2001, which totaled \$300 million. (See UIPL No. 44-97 for details.)
- The Special Administrative Distribution of \$500 million made on February 27, 2009, by the Recovery Act. (See UIPL No. 14-09 for details.)

Because these two distributions may be used only for administrative purposes, they are not available for the payment of benefits. Therefore, no action is needed by states to set aside these funds as unavailable for the payment of benefits.

Except for the funds discussed above, all other amounts in the state’s unemployment fund are limited to the payment of UC. As such, they must be used for that purpose before the state may receive a Title XII advance.

5. Procedures to set aside amounts in an Administrative Subaccount. Under the Department’s new interpretation, the Department will approve a state’s request to set aside amounts in an Administrative Subaccount when the funds have been limited to administrative use due to the following actions:

- The state legislature has appropriated the funds and the state agency has obligated the funds. (For this UIPL’s purposes, “obligated” means a valid obligation that meets the state law’s requirements for obligating funds.) For example, the state agency has entered into a contract that requires it to pay for the provision of computer services. The state’s request must include information about the appropriation, including a copy of the relevant sections of the law and the date the appropriation was enacted and became effective. The request must include also the date the obligation(s) was entered into, the amount of the obligation(s), and the last date under which payment(s) is required.
- The state has appropriated the funds for administrative purposes, but the agency has not yet entered into an obligation. The request must include the same information regarding the appropriation indicated above. It must also include the expiration date of the appropriation, the date the state expects to obligate the money, and an explanation of why the state reasonably expects to enter into an obligation by such date.

If the state does not enter into an obligation by the time the appropriation authority ends, the authority to place or retain the funds in an Administrative Subaccount also ends. Absent evidence of an obligation, the Department will remove funds from the Subaccount on the day after the date the appropriation ends. It is the state’s responsibility to advise the Department of any obligation to avoid a removal of funds. Also, if the appropriation authority has not yet ended, but the state has determined that it will not enter into an obligation by the date described in its request, the state must immediately and in writing

advise the Department (1) of its revised expected date for entering into such an obligation, or (2) that it no longer plans to obligate such funds, in which case the Department will remove the funds from the Subaccount.

- The state has appropriated the funds for payment of agency staff. In this case, there will likely be no obligation since the agency will not obligate funds to itself. In addition to including the appropriation material indicated in the first dot point above, the state's request must include a plan describing: (1) the expected uses; (2) the period of time during which the funds will be expended, including the projected rate of expenditures over such period; and (3) the date the authority will end.

In each case, the Subaccount must be established *prior* to the state receiving a Title XII advance. It should also be noted that it is possible for a state with an outstanding advance to place funds in an Administrative Subaccount. For example, after receiving its quarterly employer contributions and a UC Modernization Incentive Payment, a state may not need to obtain additional Title XII advances for several months. If the state appropriates some or all of its Incentive Payment and meets one of the three conditions listed above, it could have amounts set aside in an Administrative Subaccount. Such amounts must be placed in the Administrative Subaccount before the next borrowing.

6. Reporting on Subaccount. Subaccount activities must be reported on form ETA 8403, "Summary of Financial Transactions, Title IX Funds" (Office of Management and Budget (OMB Control No. 1205-0154). The ETA 8403 is to be submitted for each month in which an administrative appropriation is enacted, or funds are obligated, withdrawn from the state's unemployment trust fund account, or expended. See the reporting instructions for the ETA 8403 report, which begin on page III-2-1 of ET Handbook No. 401.
7. Address. States may submit requests by fax, e-mail, or mail. States may fax requests to 202-693-2874 to the attention of OWS Budget (this is not a toll-free number), or email to ows.reedact@dol.gov. Requests mailed should be addressed to:

Administrator
Office of Workforce Security
Attention: DFAS
200 Constitution Avenue NW
Room S-4231
Washington, DC 20210

8. Paperwork Reduction Act of 1995 (PRA) Statement. The public reporting burden for this collection of information is estimated to average approximately one hour per request, including time for gathering and maintaining the data needed to complete the required disclosure.

This UIPL contains a collection of information in the form of a request for establishment of an Administrative Subaccount to be reported on ETA 8403 (OMB Control No. 1205-0154). The Department is submitting a revised Information Collection Request (ICR) to OMB for OMB Control No. 1205-0199 to incorporate this revised position on obtaining a Title XII advance. The Department notes that a Federal agency may not 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 provision 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 its review of the Department's ICR if any changes result from this review process.

9. Action. State administrators should distribute this advisory to appropriate staff.
10. Inquiries. Questions should be addressed to your Regional Office.