

**State Questions on Section 116 of the Continuing Appropriation Act, 2014 (“CR”),
Pub. L. 113-46**

1. Question: How does a state determine if it is eligible for interest on administrative expenditures incurred during the Federal government shutdown?

Answer: A state is eligible to receive interest under section 116(a) of Pub. L. 113-46 if state funds were used during the Federal government shutdown to pay expenses that would normally have been paid via a Federal grant in absence of the shutdown. In addition, a state may receive interest on the cost of compensating state employees who were furloughed due to the lapse in appropriations. Compensation for these employees is discussed in questions (number 5 and number 7) below.

2. Question: What is the applicable period during which interest could be earned?

Answer: The period during which interest could potentially have been earned for UI and WIA State Administration pursuant to section 116(c) of Pub. L. 113-46 is October 1, 2013; through the date Administrative funds were made available in the Payment Management System for drawdown.

3. Question: At what rate will the interest be paid?

Answer: The U.S. Department of the Treasury (Treasury) will calculate the interest rate in accordance with Section 116(a) of Pub. L. 113-46 and 31 U.S.C. 6503(d) “at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated.”

4. Question: If a state determines it is eligible, how does it apply for payment of the interest?

Answer: Eligible and interested states wishing to pursue this option should contact John Ake, Budget Officer, Office of Unemployment Insurance (OUI), at ake.john@dol.gov. The subject/title line of the email should include the name of the state and the title, *Application for Interest Earned on State Funds Used during the Federal Shutdown*. An email response will be sent within two business days acknowledging receipt of the electronic documents. OUI will work with interested states to ensure the appropriate data are obtained and provided to Treasury which will determine the amount of interest earned under section 116(a) of Pub. L. 113-46 and distribute the funds to eligible states.

5. Question: If employees of grantees whose salaries would have been paid in whole or in part with Federal funds were furloughed due to the lapse in appropriations, must grantees ensure that these furloughed employees are compensated for the portion of their salary that would have been paid by the Federal government absent the government shutdown?

Answer: Yes. Section 116(a) of the CR requires that compensation be provided to furloughed employees of state or other Federal “grantees.” Under the CR, “state” and “grantee” have the same definition as under the applicable Federal program (Section 116(b)). All state grantees in the Department’s grant programs must compensate state workers who were furloughed due to the lapse in appropriations for the portion of their salary that would have been paid by the Federal government absent the government shutdown.

6. Question: If local employees (including employees of American Job Centers and Workforce Investment Boards) whose salaries would have been paid in whole or in part with Federal funds were furloughed due to the lapse in appropriations, must grantees ensure that these furloughed local workers are compensated for the portion of their salary that would have been paid by the Federal government absent the government shutdown? If payment is not required, is it an allowable cost to compensate these employees for the portion of their salaries that would have been paid by Federal funds? (See questions/answers below.)

- Question: Must grantees pay these local salaries?

Answer: No, they may not do so. Payment to local workers who are funded by Workforce Investment Act (WIA) formula grants is not permitted under Section 116 of the CR, which requires compensation be provided to furloughed employees of “state” or other Federal “grantees” as those terms are defined under the relevant Federal program, but does not provide authority to compensate employees of other entities. Under WIA “grantee” is defined as “the direct recipient of grant funds from the Department of Labor” (20 CFR 660.300). Local workforce investment areas are not states, nor are they direct recipients of formula grants under WIA. Rather, local areas receive funds through allocations from the states in the form of sub grants. Furloughed local employees who are funded out of direct competitive grants would be reimbursed under Section 116(a) of the CR.

- Question: Is payment of salaries to furloughed local workers an allowable cost in these circumstances?

Answer: No, reimbursement to local workers who were furloughed due to the lapse in appropriations is not an allowable cost. To be allowable, a cost charged by a state grantee to a Federal award must meet the Circular A-87 guidelines, Cost Principles for State, Local, and Indian Tribal Governments, including, as relevant here, that the cost be necessary and reasonable for proper and efficient performance and administration of Federal awards. Normally, it is not allowable to pay salary costs for work not performed under the grant.

7. Question: Must states use grant funds to provide backpay to state workers who the state classified as “temporarily laid off” rather than on furlough if the layoffs were due to the lapse in appropriations and the workers’ salaries would otherwise have been paid by Federal funds? What if states reduced work hours or otherwise reduced pay in the same situation?

Answer: “Furlough” is defined in 5 U.S.C. 7511 as “the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.” A state must determine whether the state action meets this definition of furlough. If the employee’s status meets this statutory definition and is due to the lapse in Federal appropriations, then state employees must be compensated under the direction in Section 116(a) of the CR.