

U.S. DEPARTMENT OF LABOR Employment and Training Administration Washington, D.C. 20213	CLASSIFICATION
	UI CORRESPONDENCE SYMBOL TEUMI
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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 26-85

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : *Barbara Ann Farmer*
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 for Regional Management

SUBJECT : Interest on Overpayment of Federal Claims

1. Purpose. To provide information pertaining to interest on overpayments of Federal claims (UCFE, UCX and FSC).

2. Background. Recently a SESA which charges interest on all unpaid balances on regular UI overpayments raised the following questions on Federal claim overpayments:

1. Can the agency charge and collect interest on overpayments for Federal program claims on the same basis as it does for State UI?
2. If yes, may the agency retain these funds?

3. Information. The collection of interest on the overpayment balances for Federal program claims is not only permissible, but required by statute. In addition, the interest collected cannot be retained by the State agency but must be paid into the fund from which the benefits were paid together with the principal recovered.

Federal laws (5 U.S.C. Section 8502(b), 5 U.S.C. Section 8521(b) and Section 602(d)(2) of the Federal Supplemental Compensation Act of 1982) require equal treatment of claimants under the Federal benefit programs, UCFE, UCX and FSC. Under the equal treatment rule, if a State agency imposes on claimants an interest charge on overpayment balances under the regular Federal-State unemployment compensation program, the charge must be imposed on overpayment balances due under the Federal programs (20 CFR Section 609.11(f), 614.11(f)). Federal law requires no minimum or "Standard" interest rate.

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Therefore, whatever interest rate that applies to regular State unemployment insurance, also applies to Federal program funds.

Under the applicable Federal statutes and regulations, a State is not authorized to retain the interest collected on Federal program overpayments. In the UCFE and UCX programs, an overpayment that results from a knowing misrepresentation or failure to disclose material facts, must be repaid. 5 U.S.C. Section 8507(a). Section 8507(b)(1) provides that "[a]n amount repaid" under subsection (a) shall be "deposited in the fund from which payment was made, if the repayment was to a State agency." (Emphasis supplied). See, e.g., 20 C.F.R. Section 609.11(j)(1). The term "an amount repaid" includes both the overpayment principal recovered and any interest charge assessed. Therefore, both the principal and the interest charge must be deposited in the account from which the payment was made.

Retention of interest by the State is invalid as applied to Federal programs for an additional reason; it would amount to an unauthorized appropriation of Federal property. Although authority for assessment of an interest charge is vested in State law, the imposition of the charge does not entitle the State to assume ownership of the interest.

Interest on interpleaded or deposited private property funds generally follows the principal and is a protected property right that may not be appropriated by the State without just compensation. Therefore, if the State retains interest on Federal funds, it essentially appropriates Federal property.

4. Action Required. SESAs are requested to provide the above information to appropriate staff members.

5. Inquiries. Direct inquiries to the appropriate regional office.