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| U.S. DEPARTMENT OF LABOR Employment and Training Administration Washington, D. C. 20210 | CLASSIFICATION |
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| RESCISSIONS | EXPIRATION DATE |
| None | September 30, 1988 |

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 38-87

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Payment of Interest on Title XII Loans

1. **Purpose.** To provide States with instructions for payment of interest on Title XII advances due September 30, 1987.
2. **Reference.** Social Security Act (SSA), Sections 1202(b)(3)(A), 1202 (b) (5), and 303(c)(3); Federal Unemployment Tax Act (FUTA), Section 3304(a)917) and UIPL 57-86.
3. **Background.** Public Law 98-21 amended Section 1202(b)(3)(A) of the Social Security Act to require that the payment of interest due on Title XII advances must be made before the first day of the next fiscal year.

Interest due and payable on advances made during the months of May through September 1987 may be deferred until no later than the last day of calendar year 1988. Interest will accrue on the deferred interest until it is paid. No interest is due on advances made January 1 through September 30 and repaid in full prior to October 1 in the same calendar year provided no additional advances are obtained before the end of the calendar year. If an additional loan is obtained after September 30 and within the same calendar year, interest on loans secured prior to October 1 of the same calendar year is due and payable the day after the day that first additional borrowing occurs.

The Department of Labor and the Trust/Funds Branch in the U.S. Treasury have determined and agreed that since the last day of Fiscal Year (FY) 1987 falls on a Wednesday, any interest due and payable prior to October 1, must be paid on or before Wednesday, September 30, 1987. The rate of interest charged during Calendar Year 1987 is 9.33 percent; the rate of interest for Calendar Year 1986 is 9.97 percent.

4. **Source of Funds.** Section 1202(b)(5) of the SSA provides that: Interest required to be paid under paragraph (1) shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. If the Secretary of Labor determines that any State action results in the paying of such interest directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) from such unemployment fund, the Secretary of Labor

shall not certify such State's unemployment compensation law under Section 3304 of the Internal Revenue Code of 1954. Such noncertification shall be made in accordance with Section 3304(c) of such code.

Section 303(c) (3), SSA, and Section 3304(a)(17), FUTA, also prohibit paying interest directly or indirectly from the State's unemployment fund. To clarify what constitutes acceptable funding sources UIPL 30-86 was issued on May 12, 1986. It stated that payment of interest on Title XII advances from any State fund other than the State unemployment fund is not prohibited by Federal law even if State law requires or permits excess amounts in that fund to be transferred to the unemployment fund. These funds include penalty and interest and special funds which have been created solely for the payment of interest on Title XII advances.

In accordance with Federal law, the Secretary of Labor must determine if the funds used for the payment of interest were derived directly or indirectly from State unemployment funds.

5. Procedure. To expedite the interest calculation and billing process at Treasury and to provide SESAs with more time to transmit interest amounts due, the following procedure which was initiated in 1984, is continued this year:
 - a. Treasury Calculation and Billing of Interest Due.
September 18, 1987, has been designated as the cut-off date for the calculation of interest due. Interest will be calculated by Treasury on the outstanding balance of interest-bearing Title XII advances as of the close of business on that day and projected through September 30, 1987. This amount will be billed to the States as the amount of interest due and payable on or before September 30, 1987.

Projection of interest assumes no further advances or repayments after the cut-off date and through September 30, 1987. If a State receives additional advances or makes voluntary repayments after the September 18 cut-off date, the amount billed by the Treasury must be adjusted by the SESA in accordance with the procedure in (b) and (c) below.

- b. Increased Interest Due to Advances Received After September 18, 1987. The formula SESAs are to follow to calculate the daily interest accrual on Title XII advances received during the period September 21 through September 30, 1987, is as follows:

Interest Rate (9.33 percent) times 1 day divided by 365 times the advance amounts received from September 21 through September 30, 1987, and outstanding on that day equals the amount of interest due for that day (rounded to the nearest cent). This procedure must be repeated for each day such advance amounts are outstanding from the day of receipt until and including September 30, 1987. The increased amount of interest due will be the sum of the daily interest accruals resulting from the above calculations and is to be added by the SESA to the amount billed by Treasury.

- c. Reduction of Interest Amount Billed Due to Voluntary Repayments Made After September 18, 1987. To determine the amount of interest to be subtracted from the amount billed by Treasury in the event a repayment(s) is made subsequent to September 18, and on or before September 30, 1987, the following procedure should be used: Perform the calculation as explained in (b) above to determine the daily interest accrual for each repayment from the date made until and including September 30, 1987 (rounded to the nearest cent). The amount to be subtracted from the amount billed by Treasury will be the sum of the daily interest accruals from each day's repayment(s) as

explained above. Any adjustment to the amount billed by Treasury must be documented and substantiated in a letter to the Trust/Funds Branch which must follow the interest payment immediately. Treasury will verify the transactions and adjustments and advise the State if further action is required. Accuracy in the calculation of adjustments by SESAs is essential.

- d. Important Notice. If a discrepancy occurs which results in a late payment, the sanctions provided in Section 3304(a)(17) of the Federal Unemployment Tax Act and Sections 303(c)(3) and 1202(b)(5) of the Social Security Act apply in accordance with Section 3304(c), FUTA.

6. Treasury Contacts.

- a. The billing notice to the States will include the name and telephone number of a contact person in the Trust/Funds Branch in the U.S. Treasury. Exact detailed instructions for SESAs to follow to pay the interest amount due and payable on or before September 30, 1987, will also be included in the billing letters prepared by Treasury.
- b. Treasury Staff are available for consultation with SESAs at any time to verify loans, repayments, and interest charges. Correspondence to the Treasury should be mailed to:

Mr. Ron Iroff
Manager, Funds Accounting Branch
U.S. Treasury Department
Treasury Annex #1 Room 326
Washington, D.C. 20226

7. OMB Approval. State Governors' Requests for Advances or Repayment of Title XII Advances have been approved in accordance with the Paperwork Reduction Act of 1980. OMB Approval No. 1205-0199, expiring December 31, 1987.

8. **Action Required.**

1. Agency Administrators should:
 - a. Assure that the responsible individuals are advised of this directive, and
 - b. Assure that any interest due and payable on or before September 30, 1987, (or at any later time) is paid timely and in accordance with instructions provided by the U.S. Treasury Department and Federal law requirements.
 1. Identification and description of the funding source to be used for the payment of interest which becomes due and payable prior to the beginning of FY 1988 (October 1, 1987), and
 2. Statutory basis for the establishment and use of such funds.

The requested information should be forwarded to:

Honorable William E. Brock
Secretary of Labor
U.S. Department of Labor
Room S-2523
200 Constitution Avenue, N.W.
Washington, D.C. 20210

9. **Inquiries**. Direct questions to the appropriate Regional Office.

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