

Conformity Requirements for State UC Laws

Immediate Deposit and Withdrawal Standards and the Payment of Compensation

Background

When the UC program was established, Congress determined that investment of unemployment fund moneys by the Federal government was the preferred method of managing these funds. Therefore, the Social Security Act (SSA) established a trust fund with the Secretary of the Treasury as trustee and with the respective state agencies responsible for administering the state UC laws as beneficiaries of the trust. (Section [904](#), SSA.) States collect taxes due the trust and make the actual payment of compensation to claimants. The deposit and withdrawal standards serve to protect the trust moneys while in the hands of the states.

The immediate deposit standard requires that all moneys received by a state for the unemployment fund immediately upon receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund.

In line with trust principles, Federal law limits the use of moneys in the fund to the purposes of the fund, that is, payment of UC. The only exceptions to the requirement that withdrawals from the fund be limited to payment of UC are those specifically provided for in Federal law. This limitation on the use of the money is referred to as the withdrawal standard.

The immediate deposit and withdrawal standards, along with other provisions of the SSA and the FUTA discussed below, implement the trust principles inherent in the UC program.

Federal Law

Section [3304](#)(a)(3), FUTA, requires, as a condition for employers in a state to receive credit against the Federal tax, that:

all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section [3305](#)(b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section [904](#) of the Social Security Act

Section [3304](#)(a)(4), FUTA, requires, as a condition for employers in a state to receive credit against the Federal tax, that state law provide that:

all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund

Section [3306\(h\)](#), FUTA, defines compensation as "cash benefits payable to individuals with respect to their unemployment."

Section [3306\(f\)](#), FUTA, defines unemployment fund as:

. . . a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section [904](#) of the Social Security Act, as amended, shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency.

Section [303\(a\)](#), SSA, provides that the Secretary of Labor shall make no certification for payment to any state unless he finds that the law of such state, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for -

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section [3305\(b\)](#) of the Federal Unemployment Tax Act), immediately upon such receipt to the Secretary of the Treasury to the credit of the unemployment trust fund established by section [904](#); and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section [3305\(b\)](#) of the Federal Unemployment Tax Act: . . . *Provided further*, That the amounts specified by section [903\(c\)\(2\)](#) may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: . . . That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section: . . . *Provided further*, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in Section [3306\(t\)](#) of the Internal Revenue Code of 1986);

Frequently Asked Questions

1. What is the “unemployment fund”?

The unemployment fund is a special fund, established under a state law and administered by a state agency, for the payment of UI compensation.

2. When is money “in” the unemployment fund?

Federal law requires that all money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund. This requirement is referred to as the “immediate deposit standard.” In order to effectuate this requirement, money is considered to be in the unemployment fund at the instant of receipt by the state or its agent. (See [UIPL 22-96](#).) Any other interpretation would defeat the purpose of establishing a trust as the transfer of moneys due the trust could be indefinitely delayed even though in the state's possession. The only exceptions to the immediate deposit standard are those provided for by Federal law.

3. May a state deposit contributions collected in an account in a state bank and collect interest on those funds until they are deposited in the Unemployment Trust Fund on the last day of each week?

No. Federal law requires that all money received, immediately upon such receipt, be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund. Only the Secretary of the Treasury is authorized to invest money in the unemployment fund. (See [UIPL 22-96](#).)

4. May a state use money earned on moneys kept in the benefit payment and clearing accounts to pay the costs incurred in the operation of the accounts?

A state may use money earned in the benefit payment account to pay for the cost incurred in the operation of that account. It may not do so with the clearing account. This exception to the immediate deposit and withdrawal standards is permitted by the Cash Management Improvement Act (CMIA.) The CMIA provides that “amounts of interest paid by a State, on funds drawn from its account in the Unemployment Trust Fund, shall be deposited into that account and shall consist of actual interest earnings by the State, less related banking costs incurred by the State, for the period for which interest is calculated.” ([31 U.S.C. 6503\(c\)\(3\)](#).) Because the CMIA limits the use of interest to funds drawn from its account in the UTF, interest earned on the clearing account must remain in the unemployment fund and may not be used for the payment of banking costs.

5. What is meant by the phrase “sums erroneously paid into such fund?”

Sums are erroneously paid into the fund only if an error is made by the employer, his agent or the state agency that results in an amount being paid into the fund that was not

required by the state law in effect at the time the payment was made. A retroactive change in state law does not make a prior payment erroneous.

6. Are there other exceptions to the withdrawal standard?

Sections [3304\(a\)\(4\)](#), FUTA, and [303\(a\)\(5\)](#), SSA, provide for refunds under [§3305\(b\)](#), FUTA. This section provides that contributions may be refunded to certain Federal instrumentalities if the state law is not certified by the Secretary of Labor.

Some of the instances where the FUTA and the SSA provide that funds can be withdrawn for purposes other than the payment of compensation include: withholding of state, local and Federal income tax; employee's contributions to a temporary disability insurance plan; amounts specified by [§903\(c\)\(2\)](#), SSA, commonly called Reed Act monies; withholding from UC to pay health insurance premiums in accordance with a plan approved by the Secretary of Labor; payment of short-time compensation; payment of self-employment assistance allowances; child support payments paid to a child support agency; and repayments of Food Stamp overissuances made to the state Food Stamp agency.

7. Does the payment of part of an individual's UC to another party as a garnishment, or to satisfy a court, order violate the withdrawal standard?

Yes. Since payment must be made to individuals with respect to their unemployment, a prohibition exists against paying compensation or delivering checks to anybody but the claimant. State law must provide that no waiver, assignment, pledge, or encumbrance of any right to UC shall be valid; and that UC shall be exempt from levy, execution, attachment, order for the payment of attorney fees or court costs, or any other remedy for the collection of public or private debts, prior to receipt by the claimant. (There are exceptions for child support and the repayment of Food Stamp overissuances. See Sections [303\(d\)\(2\)](#) and [\(e\)\(2\)](#), SSA.)

8. May state law provide for a means test in order to determine whether an individual is eligible for UC?

No. This was the subject of a 1964 conformity decision by the Secretary of Labor. In that decision the Secretary stated that "a worker laid off by his employer, whose base-period earnings exceed \$6,000, is no less unemployed than the laid-off worker whose base-period earnings are less than \$6,000. The eligibility for payment of compensation in the one case and the ineligibility for payment in the other are premised upon the amount of income from earnings, a condition of entitlement unrelated to the fact or cause of unemployment and therefore inconsistent with . . . Federal law."

9. Are there any other UC requirements that are derived from the withdrawal standard?

The withdrawal standard and decisions of Federal courts that reference it, as well as statements of Congressional intent in the Committee Report of the Social Security Act of 1935, are the basis for the Department of Labor's interpretation that state law must

require that claimants must be attached to the labor force before becoming eligible for compensation, claimants must have suffered a loss of work, claimants must continue to demonstrate attachment to the labor force in order to collect unemployment compensation, and claimants must be able and available for work in order to receive compensation (See [20 CFR Part 604](#).)

References

[UIPL 787](#). Disqualification for Base-Period Wages of \$6,000 or Over.

[UIPL 45-89](#). Permissible Deductions from Payments of Unemployment Compensation.

[UIPL 1-82](#), [UIPL 15-82](#), [UIPL 19-89](#), [UIPL 37-96](#), [Change 1](#). Discuss deductions for child support.

[UIPL 37-86](#), [UIPL 37-96](#), [UIPL 37-96](#), [Change 2](#). Discuss deductions for Food Stamp overissuances.

[UIPL 17-95](#), [Change 1](#). Discusses priorities of withholding.

[20 CFR Part 604](#). Regulations for Eligibility for Unemployment Compensation. Codifies the Able and Available requirements.