

REGULATIONS

**Monday
September 26, 1988**

Part IV

Department of Labor

Employment and Training Administration

**20 CFR Part 606
Federal-State Unemployment
Compensation Program; Tax Credits
Under the Federal Unemployment Tax
Act; Advances Under Title XII of the
Social Security Act; Final Rule**

DEPARTMENT OF LABOR**Employment and Training Administration****20 CFR Part 606****Federal-State Unemployment Compensation Program; Tax Credits Under the Federal Unemployment Tax Act; Advances Under Title XII of the Social Security Act**

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration is issuing final regulations to formally adopt interpretations of statutes under which the agency has delegated responsibilities concerning cap, avoidance, and waiver of tax credit reduction under the Federal Unemployment Tax Act and deferral and delay of payment of interest on advances made to States under Title XII of the Social Security Act. The agency issues these regulations to place in the Code of Federal Regulations its previously announced and disseminated interpretations because the statutes in selected places require regulations and because some of the interpretations might be viewed as substantive in nature. These final regulations represent the first of a two-phase effort to issue comprehensive regulations concerning tax credits, reductions in tax credits related to advances, advances (loans), interest on advances, and relief from tax credit reductions and payment of interest on advances. The first phase includes regulations for relief provisions; the second phase will include the remaining subjects.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: James H. Manning, Chief, Division of Actuarial Services, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-4519, Washington, DC 20210, Telephone: (202) 535-0640 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under section 3301 of the Federal Unemployment Tax Act (FUTA), employers in all States are assessed an excise tax at a rate of 6.2 percent on a taxable wage base of \$7,000. However, employers generally receive a maximum FUTA tax credit of 5.4 percent, resulting in a net Federal tax rate of 0.8 percent.

States with insufficient reserves in their unemployment funds to meet State benefit obligations may borrow funds

from the Federal Unemployment Account (FUA) in the Unemployment Trust Fund, pursuant to Title XII of the Social Security Act. If a State does not repay the advances (loans) it may have within a specified period of time, employers in the State begin to lose the FUTA tax credit in increments of at least 0.3 percent each year. Specifically, if a balance of advances is outstanding on two consecutive January firsts, and is not fully repaid prior to November 10 of such second year, the FUTA tax credit applicable for that year for the State's employers is reduced by 0.3 percent. For each succeeding year in which a balance of loans remains outstanding, the reduction increases by at least 0.3 percent (i.e., 0.6, 0.9, 1.2 percent, etc.).

Additional tax credit reduction, above the 0.3 percent incremental increase, will apply to a State beginning with the third and fifth taxable years that a loan balance is still outstanding. Essentially, the additional tax credit reduction above the 0.6 percent increment in the third year, and above the 0.9 percent increment in the fourth year, is the amount, if any, by which the national percentage of all wages subject to the FUTA (that 2.7 percent of taxable wages represents) exceeds the State's average contribution rate on total wages. The additional tax credit reduction above the 1.2 percent minimum beginning with the fifth year is equal to the amount, if any, by which the State's five-year benefit cost rate (or 2.7 percent, if higher) exceeds the State's average employer contribution rate. This additional tax credit reduction for the fifth year also applies thereafter to any succeeding year.

Public Laws 97-35, 97-248, and 98-21 made major changes in the loan and repayment provisions: Interest of up to 10 percent is charged on loans made on or after April 1, 1982 (except for cash flow loans); and States are permitted relief from automatic loan repayment (tax credit reduction) and payment of interest if certain requirements are met. Briefly, the provisions for relief include:

- Limitation (cap) on tax credit reduction
- Avoidance of tax credit reduction
- Waiver of and substitution for fifth-year additional tax credit reduction
- May/September delay of interest payment
- High unemployment deferral of interest payment
- High unemployment delay of interest payment

Phases

The issuance of comprehensive regulations concerning tax credits, reductions in tax credits related to

advances, advances (loans), interest on advances, and relief from tax credit reductions and payment of interest on advances will be undertaken in two phases. This final rule primarily concerns tax credit and interest relief and represents the first phase; the second phase will include the remaining subjects.

Amendments to the Federal Unemployment Tax Act

Subsection (f)(1)-(7), added to section 3302 of the Federal Unemployment Tax Act (FUTA) by section 2406 of Pub. L. 97-35, as amended by section 512(b) of Pub. L. 98-21, provides certain conditions under which there may be a limitation on the tax credit reduction that would otherwise apply for a taxable year to employers' FUTA tax liability in States with outstanding loans from the Federal Unemployment Account (FUA).

Subsection (g), added to section 3302 of the FUTA by section 272 of Pub. L. 97-248, provides certain conditions for avoiding the tax credit reduction for a taxable year.

A provision added to section 3302(c)(2) of the FUTA by section 273 of Pub. L. 97-248, sets forth the conditions under which the additional tax credit reduction under subparagraph (B) may be substituted for the additional reduction that otherwise would apply under subparagraph (C).

Amendments to the Social Security Act

Subsection (b), added to section 1202 of the Social Security Act (SSA) by section 2407 of Pub. L. 97-35, as amended by section 274 of Pub. L. 97-248 and by sections 511 and 514 of Pub. L. 98-21, imposes interest on advances, under most conditions, made to States beginning April 1, 1982. Under subsection (b)(2), interest is not assessed on loans obtained January through September and fully repaid prior to October 1, provided no other loan is obtained from October 1 through December 31 of the same calendar year. In general, under subsection (b)(3)(A), any interest charged during a fiscal year must be paid prior to the first day of the following fiscal year.

Subsection (b)(3)(B), added to section 1202 of the SSA by section 2407(a) of Pub. L. 97-35, allows for delaying payment of interest accrued on advances made from May through September and due prior to October 1, to December 31 of the succeeding taxable year. Any interest payment delayed under subparagraph (B) will bear interest the same as if it were a loan.

Subparagraph (C), added to section 1202(b)(3) of the SSA by section 274 of Pub. L. 97-248, as amended by section 511(c) of Pub. L. 98-21, permits, under certain high unemployment conditions, a State to defer payment of 75 percent of the interest otherwise due prior to October 1 of a year. No interest is payable on interest deferred under this paragraph.

Paragraph (9), added to section 1202(b) of the SSA by section 511(a) of Pub. L. 98-21, provides, under certain high unemployment conditions, for delaying for nine months payment of 100 percent of the interest otherwise due prior to October 1 of a year. No interest is payable on interest delayed under this paragraph.

Legislative-action interest deferrals obtained under subsection (b)(8)(A)-(C), added to section 1202 of the SSA by section 511(a) of Pub. L. 98-21, are no longer available. Nevertheless, States must maintain their solvency effort with respect to the deferrals previously approved under paragraph (8).

Discounted interest rates under section 1202(b)(8)(D) of the SSA are no longer available.

Comments Received in Response to the Notice of Proposed Rulemaking

The proposed rule (new Part 606), with accompanying detailed explanation, was published for comment in the Federal Register on October 28, 1987, at 52 FR 41463. The Department received timely comments from two State Employment Security Agencies (SESAs). No other comments were received. All comments were given careful consideration in preparing the final regulations in this document.

Section-by-Section Analysis of Comments

Subpart A—General

Section 606.3(c) (In reference to differences in benefit cost ratios)

One State commented that the two benefit cost rates included in section 3302 of the Federal Unemployment Tax Act (FUTA) should be defined alike. Section 606.3(c) provides a definition of the benefit cost ratio for cap purposes relative to section 3302(f)(5). It is acknowledged that this definition differs from the benefit cost rate definition with respect to offset credit reduction provided in section 3302(d)(5). Although section 3302(d)(5) is not relevant to this regulation (but will be included in Phase II of the regulations), the Department has the following comments. Section 3302(d)(5), unlike section 3302(f)(5) (defining the term "benefit cost ratio"

for purposes of the cap on tax credit reductions), does not provide for excluding from "total * * * compensation paid" in the numerator any benefit costs reimbursed under Federal law. Under section 3302(f)(5) reimbursed benefit costs such as sharable extended benefits and sharable regular benefits are specifically excludable from total compensation paid in calculating the benefit cost ratio.

In view of this specific contrast in the definitional language of sections 3302(d)(5) and 3302(f)(5), and the different applications of the two provisions, the Department does not believe that the two provisions justifiably can be interpreted to be alike. Accordingly, the Department will implement the differences as they appear in the two statutes, and will make no change in this respect in § 606.3(c) because it precisely tracks the language of section 3302(f)(5).

Section 606.3(c)(1) (In reference to the definition of the benefit cost ratio for cap purposes)

One State was concerned about the definition and subsequent computation of the benefit cost ratio for cap purposes. The regulations define the ratio as the percentage obtained by adding the total sum of compensation paid, which is 100 percent of regular and additional compensation and 50 percent of compensation which is sharable under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, excluding compensation attributable to services performed for a reimbursing employer, plus interest paid, and then dividing by total remuneration subject to contributions. The State pointed out that the inclusion in the numerator of 50 percent of sharable compensation under EB is problematical since some States pay more than 50 percent of EB as a result of having no waiting week and because of potential Gramm-Rudman-Hollings reductions in the Federal share of EB.

The Department agrees with this comment and adds that not all extended benefits are sharable under section 204 of the 1970 Act. Therefore, the regulations are revised to clarify the point that with respect to EB, only amounts which are reimbursable by the Federal government are excludable from the computation of the benefit cost ratio for cap purposes. The language also is broadened so that it will include any other Federal reimbursements of State unemployment benefits, as the statute provides.

Sections 606.3(k) and (l) (In reference to definitions of taxable and total wages)

Paragraphs (k) and (l) of § 606.3 provide definitions of taxable wages and total wages. A State suggested clarification of the definitions of taxable and total wages to make clearer the distinction between the two terms. The Department agrees with this comment and has simplified the wording of the regulations by providing that "taxable wages" means the total sum of remuneration which is subject to contributions under a State law, and "total wages" means the total sum of all remuneration covered by a State law disregarding any dollar limitation on the amount of remuneration which is subject to contributions under the State law. No substantive change in paragraphs (k) and (l) is intended; the different wording merely simplifies and clarifies these definitions.

Sections 606.3(c)(3) and 606.3(j) (In reference to redefinition of total wages)

In reference to the definition of "total wages" in paragraph (l) of § 606.3, a State suggested referencing this definition in paragraphs (c)(3) and (j) of § 606.3, instead of repeating the definition each place it appears. The Department agrees and has incorporated this suggestion in the final regulations. This is not a substantive change in paragraphs (c)(3) or (j).

Section 606.5 (In reference to verification of estimates and review of determinations)

Two States commented on the process for reviewing cap and interest determinations by the UIS Director. One favored the regulation as long as it incorporates the "existing appeals process"; the other favored a formal, multiple-step "appellate" process and specificity regarding to whom an "appeal" is made. There is no appellate procedure in the statutes with respect to determinations concerning cap and interest relief. This regulation simply incorporates the § 601.5(b) informal discussion process, and permits State input as well as departmental input into the determination process. Because the determinations are made by the UIS Director, it is appropriate to allow States to elevate matters in dispute to a higher level within ETA. The regulations are not intended to set forth a formal appeal process, but only to incorporate elements of the existing informal process of § 601.5(b). The "existing appeals process", if this is a reference to section 3303(b) or 3304(c), is simply inapplicable to determinations under

section 3302, and of course there is no such existing process under Title XII of the Social Security Act. Therefore, no change is made in the final regulations.

Also related to the determinations process, one State suggested "that the regulation have some provision for prior ruling by USDOL on proposed state actions which might later be the subject of determination by the UIS Director". Any such "prior ruling" which actually rises to the level of a ruling in a legal sense would represent a commitment on the point addressed, but departmental comment on proposed legislation would not carry the same degree of commitment. In any case, it does not appear appropriate to address this subject in the regulations.

Subpart B—Tax Credit Reduction [Reserved]

Subpart C—Relief from Tax Credit Reduction

Sections 606.21 (a) and (b) (In reference to reduction in tax effort and decrease in solvency for cap purposes)

One State was concerned about including judicial action with legislative and administrative action in determining impact on tax effort and solvency since the State asserts it has no control over judicial action. State action in the Federal-State unemployment insurance program has always included judicial action, because courts are final arbiters of what the State law means, and "State" as used in the Social Security Act and the Federal Unemployment Tax Act has never been construed to refer solely to the executive or executive and legislative branches of the State government. The State, in fact, has control over judicial actions by virtue of normal constitutional processes; specifically, if a judicial decision results in a negative impact on tax effort and solvency, the legislature has the option of enacting an offsetting change.

Further, judicial action, as with other action, is considered for impact on tax effort and solvency when it is given effect administratively, and the State has the option of enacting changes to offset decisions resulting in negative impact. Judicial action does not include cases still pending on appeal, but a final decision at any level, if given effect, is State action, and when given effect there would be no basis for delaying a determination under Part 606 to afford the State an opportunity to enact corrective or offsetting legislation. Therefore, no change is made in the final regulations.

One State requested further definition of reduction in unemployment tax effort

and decrease in solvency in § 606.21 (a) and (b). The Department believes that the terms are appropriately defined in the regulations; furthermore, the regulations include examples of action which impact on tax effort and solvency. Therefore, no change is made in the final regulations.

One State requested clarification of the impact of legislation enacted prior to August 13, 1981, specifically automatic escalating benefit maximum provisions in place prior to that date. The imposition of a temporary freeze on escalating maximums after August 13, 1981, and subsequent removal of such freeze, as provided in legislation enacted into law prior to August 13, 1981, are not considered actions which would result in a reduction of solvency for cap purposes. As provided in the statute and § 606.21 (a) and (b), such escalating provisions do not prevent a State from meeting the cap criteria, and therefore do not impact negatively in the measurement period in which they are given effect. The issue is not whether a freeze and removal of a freeze resulted in a lower maximum weekly benefit amount in a given period (as the State implied), but that the provisions were in effect prior to August 13, 1981. Likewise, the imposition of a temporary tax after August 13, 1981, which expires within a subsequent measurement period, does not impact negatively for cap purposes. As noted below, however, while these rules apply for purposes of a cap, the rules for purposes of interest relief are different. As the effect of prior legislation for cap purposes is clearly set out in the regulations, no change is made in the final regulations.

One State commented on the impact of experience rating with respect to tax effort and solvency. It is recognized that under experience rating, current benefit costs are recouped in future periods. However, the statute provides for determination of impact in the current measurement period. Accordingly, offsetting impact in future periods due to the dynamics of an experience rating system has no bearing on impact within and determinations for current periods. Therefore, no change is made in the final regulations.

Section 606.22(b) (In reference to the anticipated impact statement for cap purposes)

One State commented that the regulation is limiting in that it requires reporting of all legislative, judicial, and administrative actions. The Department agrees that the regulations require all actions to be reported with accompanying estimates of impact. The Department recognizes the

impracticality and in some cases the impossibility of developing dollar estimates for insignificant actions, but cannot agree that insignificant actions may be disregarded. Presently, some States report that a sound figure cannot be estimated, and that an action simply has negligible or minor positive or negative impact; if the State assumptions seem reasonable and there is a net positive impact on tax effort and solvency, the determination would favor the State. A minor, nonsubstantive change is made in paragraph (b)(1) of § 606.22 to clarify the regulations and hopefully make them easier to understand, by adding at the end of (b)(1), "and actions for which estimated dollar impact is minor or negligible, indicating whether the impact is positive or negative".

Two States commented that States take numerous actions each year and that to report all actions as the regulation requires for purposes of the anticipated impact statement would be a substantial undertaking. Specifically, one State suggested that only those actions which result in impact be reported. The other State suggested reporting only significant actions, i.e., not including those actions which have minor impact; this would require a definition of "minor" which in itself could be controversial in nature. The statute requires that States take no action to reduce tax effort and solvency for cap purposes. In order for the UIS Director to determine if any actions impact negatively, the regulations appropriately require all actions and the associated impact (positive, negative, or zero) to be reported. In fact, section 3302(f)(6) authorizes the Department, by regulations, collect such information as may be necessary to make cap determinations. Accordingly, no substantive change is made in the regulations, but they are clarified by revising the phrase "and judicial decisions effecting changes in contributions or benefits paid" in § 606.22(b) so that it reads "and judicial decisions given effect". Also, another nonsubstantive change is made in § 606.22(b)(1) as noted above.

One State requested clarification of the impact of legislative action occurring in one period resulting in administrative action in a subsequent period. With respect to action affecting tax effort or solvency, section 3302(f)(2) is interpreted as having reference to State action which takes effect in a 12-month measurement period. Therefore, a change adopted in one period is not considered with respect to that period if it is not given effect until a succeeding

period. For example, legislation may be effective in some future period rather than upon enactment. So the issue is when should action be considered in terms of impact. To provide the most flexibility to the Department and to the States and to meet the intent and requirements of the statute for cap purposes, the regulations provide that actions are considered in the period in which they take effect, rather than the period in which the authorizing action was taken.

One State's comment on the inclusion of judicial action is addressed above in the discussion of § 606.21 (a) and (b).

One State's comment on the benefit cost rate computation is addressed above in the discussion of § 606.3(c).

Section 606.22(e) (In reference to the data to be supplied for the benefit cost ratio computation)

In reference to the change made in § 606.3(c)(1), as previously explained, § 606.22(e) also has been changed to reflect that the total sum of all benefits paid is taken into account, minus any amount reimbursable by the Federal government and benefits paid attributable to services performed for a reimbursing employer.

Section 606.22(f) (In reference to documentation required for cap purposes)

One State commented that the regulation limited the data sources for supporting documentation to Federal reports and pointed out that not all information is available in Federal reports. The Department agrees that not all supporting figures for anticipated impact statements are to be found in Federal reports. Therefore, § 606.22(f) has been revised by adding at the end thereof, "or in other data sources".

Sections 606.23 and 606.24 (In reference to avoidance of tax credit reduction and application therefor)

One State requested clarification of the terms "determined" and "estimated", indicating that the terms are used interchangeably and that estimated figures may not be subject to review. In clarification, some of the figures used in the decisions or determinations by the UIS Director are based on estimates; the regulations simply make clear that such estimates are the UIS Director's, not the State's. In this regard, "determined" has been changed to "estimated" in the parenthetical phrase in § 606.23(a)(1)(i), and in two places in § 606.23(a)(3), to conform usage of the two terms, and "each" is changed to "such" also for clarity.

One State questioned the inclusion of administrative law changes in reference to a net increase in solvency required for avoidance of tax credit reduction. The Department agrees that administrative law changes—and also judicial actions—are inappropriate in this context, since a net increase in solvency for this purpose could be accomplished only by legislative action. The regulations at § 606.23(b)(1) have been revised.

One State requested clarification of the two periods which are to be compared in determining whether a net increase in solvency has occurred. Section 3302(g)(2)(C) of FUTA requires the net increase in solvency to occur in the year avoidance is requested, although the law change which resulted in such net increase may have been enacted after the later of the first advance or September 3, 1982, (the date of enactment into law of subsection (g)). The year for comparison is the year avoidance is requested, and to estimate the net increase in that year the comparison must be made between the State law in effect without the law change and the State law in effect with the law change. The comparison, therefore, is not between different years, but of the same year with and without the law change. The regulation at § 606.23(b) clearly and correctly expresses the rule of comparison required by section 3302(g), but the Department agrees that ambiguity is introduced by the last sentence of § 606.24(b)(2). Therefore, § 606.24(b)(2) has been revised to remove the ambiguity; § 606.23(b)(2) remains unchanged in the final regulations.

Section 606.25 (In reference to waiver of and substitution for additional tax credit reduction)

One State's comment on the benefit cost rate computation is addressed above in the discussion of § 606.3(c).

While not relevant to this regulation, one State commented on the difference in computing additional tax credit reduction under section 3302(c)(2) (B) and (C). It is recognized that additional tax credit reduction for the third and fourth years (section 3302(c)(2)(B)) is calculated on a basis different from the calculation for the additional tax credit reduction beginning in the fifth year (section 3302(c)(2)(C)). The former adjusts (commonly referred to as "2.7 percent equivalent") for situations where a State has a taxable wage base greater than the Federal taxable wage base, while the latter does not. In view of the specific contrast between the two sections, the Department does not believe that the 2.7 percent equivalent

adjustment of section 3302(c)(2)(B) can be imputed to section 3302(c)(2)(C). Accordingly, the Department will implement the differences as they appear in the statute. Additional tax credit reduction will be included in Phase II of the regulations.

Subpart D—Interest on Advances (No comments received)

Subpart E—Relief from Interest Payment

Section 606.41(b) (In reference to high unemployment deferral)

One State requested clarification of "week 1" as it relates to the definition of high unemployment. The Department agrees and has amended the final regulations to specify that "week 1" is that week which includes January 1 of the year.

Section 606.42 (a) and (c) (In reference to high unemployment delay)

One State requested a definition of "total unemployment rate" because of different methodologies and data availability among States, and specification of whether or not the rate shall be seasonally adjusted. The Department agrees and has clarified the final regulations at § 606.42(c) to provide that the rate used in the determination is based on seasonally unadjusted civilian total unemployment rate data published by the Department's Bureau of Labor Statistics.

Section 606.42(b) (In reference to high unemployment delay)

One State questioned the requirement that the deferred payment be made prior to July 1 and, thus, does not permit payment on the following business day should the due date fall on a Saturday, Sunday or Federal holiday. It is recognized that when a legal due date occurs on a non-business day (Saturday, Sunday, or Federal holiday), for many commercial and legal purposes one is given until the next business day to comply. However, in the case of due dates for payment of interest in section 1202, the statute is explicit in providing that there shall be no grace period, and in expressing due dates in terms of not later than the specified date. Therefore, the regulations which require payment "not later than the last official Federal business day prior to the following July 1" remain unchanged. This expressly means that, if June 30 falls on a Saturday, Sunday, or a Federal holiday, the interest due must be paid not later than the last Federal business day which precedes such June 30.

Section 606.43 (In reference to maintenance of solvency effort)

One State was concerned regarding the requirements for obtaining a deferral versus the requirements for maintaining a deferral. Section 1202(b)(8) is explicit in providing that the requirements for *obtaining* a deferral are different from the requirements for *maintaining* a deferral. To obtain a deferral a State must take action to improve solvency and that action is judged in terms of its impact on solvency effort when such action is effective which may be two, three, four, etc. years from date of legislative action. To continue a deferral a State is not required to take action; however, any action which a State does take subsequent to obtaining a deferral will be judged in terms of its impact on solvency effort when such action is effective. Without question, it was the intent of the Congress that a State, allowed to defer interest over a four-year period, should maintain its solvency effort over the same four-year period. Therefore, while a State is not required to take any affirmative action to *maintain* its solvency effort, for the purpose of retaining interest payment deferral it also may not take any action which negatively impacts on the action it took to qualify for obtaining the deferral in the first instance. Accordingly, no change is made in the final regulations.

One State also was concerned about the level of solvency effort which must be maintained. To obtain a deferral in the first instance, the statute specifically defines solvency effort as "action [taken] * * * after March 31, 1982, which would have increased revenue liabilities and decreased benefits * * * (section 1202(b)(8)(B)(ii)(I)). Whatever action was taken was measured in terms of a percentage change over a base period. The statute provides that a certain percentage had to be achieved to obtain a deferral; specifically, 25 percent the first year, 35 percent the second year, and 50 percent the third year. In virtually all cases, the percents achieved by States were greater than those specified, especially for States which also received discounted rates of interest. Further, section 1202(b)(8)(C)(i) provides that: "Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort;" this expresses the requirement for maintaining solvency effort. Accordingly, it is that percentage which the State achieved with respect to the

increase in liabilities and the decrease in benefits which must be maintained. Therefore, no change is made in the final regulations.

One State commented on the method used for determining if solvency effort is maintained. The regulations were intended to provide an accurate and easy means of determining whether solvency effort is maintained by comparing revenue receipts and benefit outlays for the year for which the continuation of deferral is requested with the previous year's receipts and outlays, holding economic conditions constant. However, based on State comments and a thorough review of the issue, the regulations have been revised to account for circumstances when action becomes effective subsequent to the latest deferral. Specifically, § 606.43(b) is revised to provide for a comparison between the base year (first year for which deferral is requested) with changes effective in the year for which continuation is requested and the base year without such changes. Similarly, § 606.43(d)(2) is revised to reflect a comparison between the base year with changes and the base year without changes.

One State's comment on the anticipated impact statement in reference to the reporting of all actions is addressed above in the discussion of § 606.22.

In General

Both States pointed out certain typographical errors in the published document. These and other typographical errors are corrected in the final regulations. In addition, the title is revised to reflect more accurately the content of the final regulations. Section 606.1 is changed to begin with a more general statement of the purpose and scope of Part 606. Section 606.26 is revised to require States to apply under all circumstances for the waiver of and substitution for the additional tax credit reduction beginning in the fifth year; the proposed rule required applying only if the State did not apply for a cap on or avoidance of tax credit reduction. Also, other changes are made to clarify and simplify the final regulations.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 535-0600 (this is not a toll-free number).

Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511) the reporting provisions in this rule have been approved by the Office of Management and Budget under control number 1205-0205, expiring September 30, 1990.

Regulatory Flexibility Act

The Department believes that this rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b), because this rule directly affects only States and States are not "small entities" as that term is defined in 5 U.S.C. 601. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 606

Labor, Unemployment compensation, Federal Unemployment Tax Act.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at No. 17.225, Unemployment Insurance.

Words of Issuance

For the reasons set out in the preamble, Part 606 is added to Title 20, Chapter V, of the Code of Federal Regulations to read as set forth below.

Signed at Washington, DC, on September 9, 1988.

Roberts T. Jones,
Assistant Secretary of Labor.

PART 606—TAX CREDITS UNDER THE FEDERAL UNEMPLOYMENT TAX ACT; ADVANCES UNDER TITLE XII OF THE SOCIAL SECURITY ACT

Subpart A—General

- Sec.
606.1 Purpose and scope.
606.2 Total credits allowable.
606.3 Definitions.
606.4 Redefinition of authority.
606.5 Verification of estimates and review of determinations.
606.6 Information, reports, and studies.

Subpart B—Tax Credit Reduction (Reserved)

Subpart C—Relief from Tax Credit Reduction

- 606.20 Cap on tax credit reduction.
606.21 Criteria for cap.
606.22 Application for cap.
606.23 Avoidance of tax credit reduction.
606.24 Application for avoidance.
606.25 Waiver of and substitution for additional tax credit reduction.
606.26 Application for waiver and substitution.

Subpart D—Interest on Advances

- 606.30 Interest rates on advances.
606.31 Due dates for payment of interest. (Reserved)
606.32 Types of advances subject to interest.
606.33 No payment of interest from unemployment fund. (Reserved)
606.34 Reports of interest payable. (Reserved)
606.35 Order of application for repayments. (Reserved)

Subpart E—Relief from Interest Payment

- 606.40 May/September delay.
606.41 High unemployment deferral.
606.42 High unemployment delay.
606.43 Maintenance of solvency effort.
606.44 Notification of determinations.

Authority: 42 U.S.C. 1102; 26 U.S.C. 7805(a); Secretary's Order No. 4-75 (40 FR 18515).

Subpart A—General

§ 606.1 Purpose and scope.

(a) *In general.* The regulations in this Part 606 are issued to implement the tax credit provisions of the Federal Unemployment Tax Act, and the loan provisions of Title XII of the Social Security Act. The regulations on tax credits cover all of the subjects of 3302 of the Federal Unemployment Tax Act (FUTA), except subsections (c)(3) and (e). The regulations on loans cover all of the subjects in Title XII of the Social Security Act.

(b) *Scope.* This Part 606 covers general matters relating to this part in this Subpart A, and in the following subparts

includes specific subjects described in general terms as follows:

(1) Subpart B describes the tax credit reductions under the Federal Unemployment Tax Act, which relate to outstanding balances of advances made under Title XII of the Social Security Act.

(2) Subpart C describes the various forms of relief from tax credit reductions, and the criteria and standards for grant of such relief in the form of—

- (i) A cap on tax credit reduction,
(ii) Avoidance of tax credit reduction, and
(iii) Waiver of and substitution for additional tax credit reduction.

(3) Subpart D describes the interest rates on advances made under Title XII of the Social Security Act, dues dates for payment of interest, and other related matters.

(4) Subpart E describes the various forms of relief from payment of interest, and the criteria and standards for grant of such relief in the form of—

- (i) May/September delay of interest payments,
(ii) High unemployment deferral of interest payments,
(iii) High unemployment delay of interest payments, and
(iv) Maintenance of solvency effort required to retain a deferral previously granted.

§ 606.2 Total credits allowable.

The total credits allowed to an employer subject to the tax imposed by section 3301 of the Federal Unemployment Tax Act shall not exceed 5.4 percent with respect to taxable years beginning after December 31, 1984.

§ 606.3 Definitions.

For the purposes of the Acts cited and this part—

(a) "Act" means as appropriate the Federal Unemployment Tax Act (26 U.S.C. 3301-3311), or Title XII of the Social Security Act (42 U.S.C. 1321-1324).

(b) "Advance" means a transfer of funds to a State unemployment fund, for the purpose of paying unemployment compensation, from the Federal unemployment account in the Unemployment Trust Fund, pursuant to section 1202 of the Social Security Act.

(c) "Benefit-cost ratio" for cap purposes for a calendar year is the percentage obtained by dividing—

- (1) The total dollar sum of—
(i) All compensation actually paid under the State law during such calendar year, including in such total sum all regular, additional, and

extended compensation, as defined in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, and excluding from such total sum—

(A) Any such compensation paid for which the State is entitled to reimbursement or was reimbursed under the provisions of any Federal Law, and

(B) Any such compensation paid which is attributable to services performed for a reimbursing employer, and which is not included in the total dollar amount reported under paragraph (c)(1)(i)(A) of this section, and

(ii) Any interest paid during such calendar year on any advance, by

(2) The total wages (as defined in § 606-3(l)) with respect to such calendar year. If any percentage determined by this computation for a calendar year is not a multiple of 0.1 percent, such percentage shall be reduced to the nearest multiple of 0.1 percent.

(d) "Contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(e) "Federal unemployment tax" means the excise tax imposed under section 3301 of the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

(f) "Fiscal year" means the Federal fiscal year which begins on October 1 of a year and ends on September 30, of the next succeeding year.

(g) "FUTA" refers to the Federal Unemployment Tax Act.

(h) "State unemployment fund" or "unemployment fund" means a special fund established under a State law for the payment of unemployment compensation to unemployed individuals, and which is an "unemployment fund" as defined in section 3306(f) of the Federal Unemployment Tax Act.

(i) "Taxable year" means the calendar year.

(j) "Unemployment tax rate" means, for any taxable year and with respect to any State, the percentage obtained by dividing the total amount of contributions paid into the State unemployment fund with respect to such taxable year by total wages as defined in § 606.3(l).

(k) "Wages, taxable" means the total sum of remuneration which is subject to contributions under a State law.

(l) "Wages, total" means the total sum of all remuneration covered by a State law, disregarding any dollar limitation on the amount of remuneration which is subject to contributions under the State law.

§ 606.4 Redelegation of authority.

(a) *Redelegation to UIS Director.* The Director, Unemployment Insurance Service (hereinafter "UIS Director"), is redelegated authority to make the determinations required under this part. This redelegation is contained in Employment and Training Order No. 1-84, published in the *Federal Register* on November 14, 1983 (48 FR 51870).

(b) *Delegation by Governor.* The Governor of a State, as used in this part, refers to the highest executive official of a State. Wherever in this part an action is required by or of the Governor of a State, such action may be taken by the Governor or may be taken by a delegatee of the Governor if the Department is furnished appropriate proof of an authoritative delegation of authority.

§ 606.5 Verification of estimates and review of determinations.

The Department of Labor (hereinafter "Department") shall verify all information and data provided by a State under this part, and the State shall comply with such provisions as the Department considers necessary to assure the correctness and verification of such information and data. The State agency of a State affected by a determination made by the UIS director under this part may seek review of such determination by a higher level official of the Employment and Training Administration.

§ 606.6 Information, reports, and studies.

A State shall furnish to the Secretary of Labor such information and reports and conduct such studies as the Secretary determines are necessary or appropriate for carrying out the purposes of this part, including any additional information or data the UIS Director may require for the purposes of making determinations under Subparts C and E of this part. This collection has been approved by the Office of Management and Budget under control number 1205-0205.

Subpart B—Tax Credit Reduction [Reserved]

Subpart C—Relief from Tax Credit Reduction

§ 606.20 Cap on tax credit reduction.

(a) *Applicability.* Subsection (f) of section 3302 of FUTA authorizes a

limitation (cap) on the reduction of tax credits by reason of an outstanding balance of advances, if the UIS Director determines with respect to a State, on or before November 10 of a taxable year, that—

(1) No action was taken by the State during the 12-month period ending on September 30 of such taxable year which has resulted, or will result, in a reduction in the State's unemployment tax effort, as defined in § 606.21(a);

(2) No action was taken by the State during the 12-month period ending on September 30 of such taxable year which has resulted, or will result, in a net decrease in the solvency of the State unemployment compensation system, as defined in § 606.21(b);

(3) The State unemployment tax rate (as defined in § 606.3(j)) for the taxable year equals or exceeds the average benefit-cost ratio (as defined in § 606.3(c)) for the calendar years in the five-calendar year period ending with the calendar year immediately preceding the taxable year for which the cap is requested, under the rules specified in § 606.21 (c) and (d); and

(4) The outstanding balance of advances to the State on September 30 of the taxable year was not greater than the outstanding balance of advances to the State on September 30 of the third preceding taxable year.

(b) *Maximum tax credit reduction.* If a State qualifies for a cap, the maximum tax credit reduction for the taxable year shall not exceed 0.6 percent, or, if higher, the tax credit reduction that was in effect for the taxable year preceding the taxable year for which the cap is requested.

(c) *Year not taken into account.* If a State qualifies for a cap for any year, the year and January 1 of the year to which the cap applies will not be taken into account for purposes of determining reduction of tax credit for subsequent taxable years.

(d) *Partial caps.* Partial caps obtained under subsection (f)(8) are no longer available. Nevertheless, for the purposes of applying section 3302(c)(2) to subsequent taxable years, partial cap credits earned will be taken into account for purposes of determining reduction of tax credits. Also, the taxable year to which the partial cap applied (and January 1 thereof) will be taken into account for purposes of determining reduction of tax credits for subsequent taxable years.

§ 606.21 Criteria for cap.

(a) *Reduction in unemployment tax effort.* (1) For purposes of paragraph (a)(1) of § 606.20, a reduction in a State's unemployment tax effort will have

occurred with respect to a taxable year if any action is or was taken (legislative, judicial, or administrative,) that is effective during the 12-month period ending on September 30 of such taxable year, which has resulted in or will result in a reduction of the amount of contributions paid or payable or the amounts that were or would have been paid or payable but for such action.

(2) Actions that will result in a reduction in tax effort include, but are not limited to, a reduction in the taxable wage base, the tax rate schedule, tax rates, or taxes payable (including surtaxes) that would not have gone into effect but for the legislative, judicial, or administrative action taken.

Notwithstanding the foregoing criterion, a reduction in unemployment tax effort resulting from any provision of the State law enacted prior to August 13, 1981, will not be taken into account as a reduction in the State's unemployment tax effort for the purposes of this section.

(b) *Net decrease in solvency.* For purposes of paragraph (a)(2) of § 606.20, a net decrease in the solvency of the State's unemployment compensation system will have occurred with respect to a taxable year if any action is or was taken (legislative, judicial, or administrative), that is effective during the 12-month period ending on September 30 of such taxable year, which has resulted in or will result in an increase in benefits without at least an equal increase in taxes, or a decrease in taxes without at least an equal decrease in benefits. Notwithstanding the foregoing criterion, a decrease in solvency resulting from any provision of the State law enacted prior to August 13, 1981, will not be taken into account as a reduction in solvency of the State's unemployment compensation system for the purposes of this section.

(c) *State unemployment tax rate.* For purposes of paragraph (a)(3) of § 606.20, the State unemployment tax rate is defined in § 606.3(j). If such percentage is not a multiple of 0.1 percent, the percentage shall remain unrounded.

(d) *State five-year average benefit cost ratio.* For purposes of paragraph (a)(3) of § 606.20, the average benefit cost ratio for the five preceding calendar years is the percentage determined by dividing the sum of the benefit cost ratios for the five years by five. If such percentage is not a multiple of 0.1 percent, the percentage shall remain unrounded.

§ 606.22 Application for cap.

(a) *Application.* (1) The Governor of the State shall make application,

addressed to the Secretary of Labor, no later than July 1 of a taxable year with respect to which a State requests a cap on tax credit reduction. The Governor is required to notify the Department on or before October 15 of such taxable year of any action occurring after the date of the initial application and effective prior to October 1 of such year that would impact upon the State's application.

(2) The UIS Director will make a determination on the application on or before November 10 of such taxable year, will notify the applicant and the Secretary of the Treasury of such determination, and will cause notice of such determination to be published in the *Federal Register*.

(b) *Anticipated impact statement.* In support of the application by the Governor, there shall be submitted with the application (on or before October 15), for the purposes of the criteria described in §§ 606.20(a)(1) and (2) and 606.21(a) and (b), a description of all statutory provisions enacted or amended, regulations adopted or revised, administrative policies and procedures adopted or revised, and judicial decisions given effect, which are effective during the 12-month period ending on September 30 of the taxable year for which a cap on tax credit reduction is requested, and an anticipated impact statement (AIS) for each such program action in the following respect—

(1) The estimated dollar effect on each program action upon expenditures for compensation from the State unemployment fund and for the amounts of contributions paid or payable in such 12-month period, including the effect of interaction among program actions, and with respect to program actions for which dollar impact cannot be estimated or is minor or negligible, indicate whether the impact is positive or negative;

(2) If a program action has no such dollar effect, an explanation of why there is or will be no such effect;

(3) A description of assumptions and methodology used and the basis for the financial estimate of the impact of each program action described in paragraphs (b)(1) and (b)(2) of this section; and

(4) A comparison of the program actions described in paragraphs (b)(1) and (b)(2) of this section with the program actions prior to the Federal fiscal year (as defined in § 606.3(f)) which ends on such September 30.

(c) *Unemployment tax rate.* With respect to the unemployment tax rate criterion described in §§ 606.20(a)(3) and 606.21(c), the application shall include an estimate for the taxable year with respect to which a cap on tax credit

reduction is requested and actual data for the prior two years as follows:

(1) The amount of taxable wages as defined in § 606.3(k);

(2) The amount of total wages as defined in § 606.3(l); and

(3) The estimated distribution of taxable wages, as defined in § 606.3(k), by tax rate under the State law.

(d) *Benefit cost ratio.* With respect to the benefit cost ratio criterion described in §§ 606.20(a)(3) and 606.21(d), the application shall include for each of the five calendar years prior to the taxable year for which a cap on tax credit reduction is requested, the following data:

(1) The total dollar sum of compensation actually paid under the State law during the calendar year, including in such total sum all regular, additional, and extended compensation as defined in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, but excluding from such total sum—

(i) The total dollar amount of such compensation paid for which the State is entitled to reimbursement or was reimbursed under the provisions of any Federal law;

(ii) The total dollar amount of such compensation paid which is attributable to services performed for a reimbursing employer, and which is not included in the total amount reported under paragraph (d)(1)(i) of this section;

(2) The total dollar amount of interest paid during the calendar year on any advance; and

(3) The total dollar amount of wages (as defined in § 606.3(l)) with respect to such calendar year.

(e) *Documentation required.* Copies of the sources of or authority for each program action described in paragraph (b) of this section shall be submitted with each application for a cap on tax credit reduction. In addition, a notation shall be made on each AIS of where all figures referred to are contained in reports required by the Department or in other data sources.

(f) *State contact person.* The Department may request additional information or clarification of information submitted bearing upon an application for a cap on tax credit reduction. To expedite requests for such information, the name and telephone number of an appropriate State official shall be included in the application by the Governor.

§ 606.23 Avoidance of tax credit reduction.

(a) *Applicability.* Subsection (g) of section 3302 of FUTA authorizes a State to avoid a tax credit reduction for a

taxable year by meeting the three requirements of subsection (g). These requirements are met if the UIS Director determines that:

(1) Advances were repaid by the State during the one-year period ending on November 9 of the taxable year in an amount not less than the sum of—

(i) The potential additional taxes (as estimated by the UIS Director) that would be payable by the State's employers if paragraph (2) of section 3302(c) of FUTA were applied for such taxable year (as estimated with regard to the cap on tax credit reduction for which the State qualifies under §§ 606.20 to 606.22 with respect to such taxable year), and

(ii) Any advances made to such State during such one-year period under Title XII of the Social Security Act;

(2) There will be adequate funds in the State unemployment fund (as estimated by the UIS Director) sufficient to pay all benefits when due and payable under the State law during the three-month period beginning on November 1 of such taxable year without receiving any advance under Title XII of the Social Security Act; and

(3) There is a net increase (as estimated by the UIS Director) in the solvency of the State unemployment compensation system for the taxable year and such net increase equals or exceeds the potential additional taxes for such taxable year as estimated under paragraph (a)(1)(i) of this section.

(b) *Net increase in solvency.* (1) The net increase in solvency for a taxable year, as determined for the purposes of paragraph (a)(3) of this section, must be attributable to legislative changes made in the State law after the later of—

(i) September 3, 1982, or

(ii) The date on which the first advance is taken into account in determining the amount of the potential additional taxes.

(2) The UIS Director shall determine the net increase in solvency by first estimating the difference between revenue receipts and benefit outlays under the law in effect for the year for which avoidance is requested, as if the relevant changes in State law referred to in paragraph (b)(1) of this section were not in effect for such year. The UIS Director shall then estimate the difference between revenue receipts and benefit outlays under the law in effect for the year for which the avoidance is requested, taking into account the relevant changes in State law referred to in paragraph (b)(1) of this section. The amount (if any) by which the second estimated difference exceeds the first estimated difference shall constitute the

net increase in solvency for the purposes of this section.

(c) *Year taken into account.* If a State qualifies for avoidance for any year, that year and January 1 of that year to which the avoidance applies will be taken into account for purposes of determining reduction of tax credits for subsequent taxable years.

§ 606.24 Application for avoidance.

(a) *Application.* (1) The Governor of the State shall make application, addressed to the Secretary of Labor, no later than July 1 of a taxable year with respect to which a State requests avoidance of tax credit reduction. The Governor is required to notify the Department on or before October 15 of such taxable year of any action impacting upon the State's application occurring subsequent to the date of the initial application and on or before November 10.

(2) The UIS Director will make a determination on the application as of November 10 of such taxable year, will notify the applicant and the Secretary of the Treasury of such determination, and will cause notice of such determination to be published in the Federal Register.

(b) *Information.* (1) The application shall include a statement of the amount of advances repaid and to be repaid during the one-year period ending on November 9 of the taxable year for which avoidance is requested. If the amount repaid as of the date of the application is less than the amount required to satisfy the provisions of § 606.23(a)(1), the Governor shall provide a report later of the additional repayments that have been made in the remainder of the one-year period ending on November 9 of the taxable year, for the purposes of meeting the provisions of § 606.23(a)(1).

(2) The application also shall include estimates of revenue receipts, benefit outlays, and end-of-month fund balance for each month in the period beginning with September of the taxable year for which avoidance is requested through the subsequent January. Actual data for the comparable period of the preceding year also shall be included in the application in order to determine the reasonableness of such estimates.

(3) The application also shall include a description of State law changes, effective for the taxable year for which the avoidance is requested, which resulted in a net increase in the solvency of the State unemployment compensation system, and documentation which supports the State's estimate of the net increase in solvency for such taxable year.

§ 606.25 Waiver of and substitution for additional tax credit reduction.

A provision of subsection (c)(2) of section 3302 of FUTA provides that, for a State that qualifies, the additional tax credit reduction applicable under subparagraph (C), beginning in the fifth consecutive year of a balance of outstanding advances, shall be waived and the additional tax credit reduction applicable under subparagraph (B) shall be substituted. The waiver and substitution are granted if the UIS Director determines that the State has taken no action, effective during the 12-month period ending on September 30 of the year for which the waiver and substitution are requested, which has resulted or will result in a net decrease in the solvency of the State unemployment compensation system as determined for the purposes of §§ 606.20(a)(2) and 606.21(b):

§ 606.26 Application for waiver and substitution.

(a) *Application.* The Governor of the State shall make application addressed to the Secretary of Labor, no later than July 1 of a taxable year with respect to which a State requests waiver and substitution. Any such application shall contain the supportive data and information required by § 606.22(b) for the purposes of §§ 606.20(a)(2) and 606.21(b). The Governor is required to notify the Department on or before October 15 of such taxable year of action occurring after the date of the initial application and effective prior to October 1 of such year that would impact upon the State's application.

(b) *Notification of determination.* The UIS Director will make a determination on the application as of November 10 of the taxable year, will notify the applicant and the Secretary of the Treasury of the resulting tax credit reduction to be applied, and will cause notice of such determination to be published in the Federal Register.

Subpart D—Interest on Advances

§ 606.30 Interest rates on advances.

Advances made to States pursuant to Title XII of the Social Security Act on or after April 1, 1982, shall be subject to interest payable on the due dates specified in § 606.31.¹ The interest rate for each calendar year will be 10 percent or, if less, the rate determined by the Secretary of the Treasury and announced to the States by the Department.

¹ (Editorial note: This section will be added at a later date.)

§ 606.31 Due dates for payment of interest. [Reserved]

§ 606.32 Types of advances subject to interest.

(a) *Payment of interest.* Except as otherwise provided in paragraph (b) of this section each State shall pay interest on any advance made to such State under Title XII of the Social Security Act.

(b) *Cash flow loans.* Advances repaid in full prior to October 1 of the calendar year in which made are deemed cash flow loans and shall be free of interest; provided, that the State does not receive an additional advance after September 30 of the same calendar year. If such additional advance is received by the State, interest on the completely repaid earlier advance(s) shall be due and payable not later than the day following the date of the first such additional advance. The administrator of the State agency shall notify the Secretary of Labor no later than September 10 of those loans deemed to be cash flow loans and not subject to interest. This notification shall include the date and amount of each loan made in January through September and a copy of documentation sent to the Secretary of the Treasury requesting loan repayment transfer(s) from the State's account in the Unemployment Trust Fund to the Federal unemployment account in such Fund.

§ 606.33 No payment of interest from unemployment fund. [Reserved]

§ 606.34 Reports of interest payable. [Reserved]

§ 606.35 Order of application for repayments. [Reserved]

Subpart E—Relief from Interest Payment

§ 606.40 May/September delay.

Subsection (b)(3)(B) of section 1202 of the Social Security Act permits a State to delay payment of interest accrued on advances made during the last five months of the Federal fiscal year (May, June, July, August, and September) to no later than December 31 of the next succeeding calendar year. If the payment is delayed, interest on the delayed payment will accrue from the normal due date (i.e., September 30) and in the same manner as if the interest due on the advance(s) was an advance made on such due date. The Governor of a State which has decided to delay such interest payment shall notify the Secretary of Labor no later than September 1 of the year with respect to which the delay is applicable.

§ 606.41 High unemployment deferral.

(a) *Applicability.* Subsection (b)(3)(C) of section 1202 of the Social Security Act permits a State to defer payment of, and extend the payment for, 75 percent of interest charges otherwise due prior to October 1 of a year if the UIS Director determines that high unemployment conditions existed in the State.

(b) *High unemployment defined.* For purposes of this section, high unemployment conditions existed in the State if the State's rate of insured unemployment (as determined for purposes of 20 CFR 615.12) under the State law with respect to the period consisting of the first six months of the preceding calendar year equalled or exceeded 7.5 percent; this means that in weeks 1 (that week which includes January 1 of the year) through 26 of such preceding calendar year, the rate of insured unemployment reported by the State and accepted by the Department under 20 CFR Part 615 must have averaged a percentage equalling or exceeding 7.5 percent.

(c) *Schedule of deferred payments.* The State must pay prior to October 1 one-fourth of the interest due, and must pay a minimum of one-third of the deferred amount prior to October 1 in each of the three years following the year in which deferral was granted; at the State's option payment of deferred interest may be accelerated.

(d) *Related criteria.* Timely payment of one-fourth of the interest due prior to October 1 is a precondition to obtaining deferral of payment of 75 percent of the interest due. No interest shall accrue on such deferred interest.

(e) *Application for deferral and determination.* (1) The Governor of a State which has decided to request such deferral of interest payment shall apply to the Secretary of Labor no later than July 1 of the taxable year for which the deferral is requested.

(2) The UIS Director will determine whether deferral is or is not granted on the basis of the Department's records of reports of the rates of insured unemployment and information obtained from the Department of the Treasury as to the timely and full payment of one-fourth of the interest due.

§ 606.42 High unemployment delay.

(a) *Applicability.* Paragraph (9) of section 1202 (b) of the Social Security Act permits a State to delay for a period

not exceeding nine months the interest payment due prior to October 1 if, for the most recent 12-month period prior to such October 1 for which data are available, the State had an average total unemployment rate of 13.5 percent or greater.

(b) *Delayed due date.* An interest payment delayed under paragraph (9) must be paid in full not later than the last official Federal business day prior to the following July 1; at the State's option payment of delayed interest may be accelerated. No interest shall accrue on such delayed payment.

(c) *Application for delay in payment and determination.* (1) The Governor of a State which has decided to request delay in payment of interest under paragraph (9) shall apply to the Secretary of Labor no later than July 1 of the taxable year for which the delay is requested.

(2) The UIS Director will determine whether delay is or is not granted on the basis of seasonally unadjusted civilian total unemployment rate data published by the Department's Bureau of Labor Statistics.

§ 606.43 Maintenance of solvency effort.

(a) *Applicability.* Legislative-action interest deferrals obtained under subsection (b)(8) (A) through (C) of section 1202 of the Social Security Act are no longer available. Nevertheless, States must maintain their solvency effort with respect to any such deferrals approved in 1983, 1984, and 1985 in order for the deferral to continue to apply in each subsequent year of deferral.

(b) *Determination regarding maintenance of solvency effort.* (1) The UIS Director shall determine if there is a net reduction in solvency effort by first estimating revenue receipts and benefit outlays under the law in effect in the 12-month period ending on September 30 of the year for which continuation of deferral is requested as if it were effective in the base year (12-month period for which the first deferral was granted).

(2) The UIS Director shall then compare revenue receipts and benefit outlays for the base year (previously estimated at the time of the original deferral) with revenue receipts and benefit outlays estimated in paragraph (b)(1) of this section.

(3) If the sum of—

(i) The percentage increase in revenue receipts from the base year to the year for which the continuation of deferral is

requested (as estimated in paragraph (b)(1) of this section), and

(ii) The percentage decrease in benefit outlays from the base year to the year for which the continuation of deferral is requested (as estimated in paragraph (b)(1) of this section),

is equal to or greater than the sum of such percentages achieved for the 12-month period ending on September 30 of the year for which the latest deferral was obtained, the State will have maintained its solvency effort, but if less, then a reduction in solvency effort will have occurred.

(4) Notwithstanding the results of the calculation in paragraph (b)(3) of this section, if there is no increase in revenue receipts or no decrease in benefit outlays between the base year and the year for which continuation of deferral is requested, then a reduction in solvency effort will have occurred.

(c) *Effect of determination.* (1) If the UIS Director determines that a State has maintained its solvency effort, continuation of deferral will be granted, and the State will be required to timely pay the deferred interest payable prior to October 1 of the year with respect to which such determination is made.

(2) If the UIS Director determines that a State failed to maintain its solvency effort, all deferred interest shall be due and payable prior to October 1 of the year with respect to which such determination is made.

(d) *Application and information.* (1) The Governor of a State which has decided to request continuation of a previously approved deferral of interest payments shall apply to the Secretary of Labor no later than July 1 of the year for which continuation is requested. The Governor is required to notify the Department on or before September 1 of such taxable year of any action impacting upon the State's application which has occurred or will occur subsequent to the date of the initial application and on or before September 30.

(2) In support of the application by the Governor, there shall be submitted for the purposes of the estimates required in paragraph (b) of this section documentation as specified in § 606.22 (b)(1) through (4), (c) and (f) and bearing upon the application for continuation of deferral, in terms of the relevant comparison between revenue receipts and benefit outlays.

§ 606.44 Notification of determinations.

The UIS Director will make determinations under §§ 606.41, 606.42, and 606.43 on or before September 10 of the taxable year, will promptly notify the applicants and the Secretary of the Treasury of such determinations, and will cause notice of such determinations to be published in the **Federal Register**. The UIS Director also will inform the Secretary of the Treasury and cause notice to be published in the **Federal Register** of information with respect to delayed payment of interest as provided in § 606.40.

[FR Doc. 88-21728 Filed 9-23-88; 8:45 am]

BILLING CODE 4510-30-M