

Act on March 27, 1996 (61 FR 13517-18).

Constance K. Robinson,

Director of Operations, Antitrust Division.

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DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: December 11, 1997, 10:00 am, U.S. Department of Labor, Seminar Room 5, 200 Constitution Ave., N.W., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219-7597.

Signed at Washington, D.C., this 25th day of November 1997.

Andrew J. Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 97-31672 Filed 12-2-97; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment

Security Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 39-97

UIPL 39-97, dated September 12, 1997, advises States of the Department of Labor's interpretation of the Reed Act provisions of Title IX of the Social Security Act and transmits updated instructions and requirements related to the use of "Reed Act" funds as transferred to State accounts in the Unemployment Trust Fund.

Dated: November 26, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

Classification: UI

Correspondence Symbol: TEUFA

Date: September 12, 1997.

Directive: Unemployment Insurance Program Letter No. 39-97

To: All State Employment Security Agencies

From: Grace A. Kilbane, Director, Unemployment Insurance Service

Subject: The Reed Act Provisions of Title IX of the Social Security Act

1. *Purpose.* To transmit updated instructions and requirements related to the use of "Reed Act" funds as transferred to State accounts in the Unemployment Trust Fund (UTF).

2. *References.* Sections 303(a)(2), 303(a)(4), 303(a)(5), 303(a)(8), 901(c), 903, 904 and 1201 of the Social Security Act (SSA); the Balanced Budget Act of 1997 (BBA), P.L. 105-33; Sections 3304(a)(3), 3304(a)(4) and 3306(f) of the Federal Unemployment Tax Act (FUTA); 29 CFR Part 97; OMB Circular No. A-87; Part IV, Sections 3000-3040 of the *Employment Security Manual (ES Manual)*; UIPL Nos. 5-90, 11-90 and 12-91; GAL Nos. 4-83, 5-94 and 2-96; and Section III, Chapter 2 of *ET Handbook No. 401*.

3. *Background.* The Unemployment Insurance Service (UIS) is issuing "basic" program letters for certain program areas to provide comprehensive instructions to States in a single document. This program letter provides guidance to States in accounting for their use of Reed Act funds in accordance with standards established by the Secretary of Labor. This directive is a consolidation of instructions from the *ES Manual* and previous UI program and administration letters related to Reed Act funds and now supersedes the *ES Manual* sections referenced above. These instructions may later be included as a part of a Handbook issuance.

4. *Action Required.* SESA administrators are requested to provide

these instructions to the appropriate staff.

5. *Inquires.* Inquires should be directed to your Regional Office.

6. *Rescission.* Part IV, Sections 3000-3040 of the *Employment Security Manual*.

7. *Attachments.*

I. The Reed Act Provisions of Title IX of the Social Security Act;

II. Draft Language for State Laws.

Attachment I—The Reed Act Provisions of Title IX of the Social Security Act

A. Introduction

1. *Definition—Background.* The term "Reed Act" refers to a part of the Employment Security Financing Act of 1954, and is used in honor of Congressman Daniel A. Reed of New York, chairman of the House Ways and Means Committee at the time. This legislation amended Titles IX and XII of the Social Security Act (SSA) and established the basic structure of the Unemployment Trust Fund (UTF). The amendments to Title IX, among other things, provided, under certain conditions, for the transfer of excess funds in the Employment Security Administration Account (ESAA) in the UTF to the individual State accounts in the UTF (Section 903(a)(1), SSA). These transferred funds are commonly referred to as "Reed Act" funds. To date, only three Reed Act distributions—in 1956, 1957, and 1958—totalling \$138 million, have been made to State accounts.

Under the SSA, the primary purpose of Reed Act funds is the payment of "cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration" (Section 903(c)(1), SSA). However, subject to conditions specified in Section 903(c)(2), SSA, a State is permitted, at its discretion, to use Reed Act funds for "the administration of its unemployment compensation law and public employment offices". (See Part E. for exception for use of Reed Act amounts allocated for fiscal years 2000, 2001, and 2002.)

Title III, SSA, governs the use of Federal grant funds for the administration of the unemployment compensation (UC) programs by States. Section 302(a), SSA, addresses the uses of UC granted funds as follows:

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to

be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made.

Section 303(a)(8), SSA, requires, as a condition of receiving UC administrative grants, that State laws include provision for: the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law.

Section 901(c)(1), SSA, authorizes to be made available for expenditure out of the employment security administration account, for each fiscal year—

(A) such amounts * * * as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to agreements under any Federal unemployment compensation law).

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49–49n).

State employment security agencies (SESAs) include both UC and public employment (ES) offices and, to the extent that they operate State activities provided for only under title III, SSA, and the Wagner-Peyser Act, will hereafter be called the “employment security program”. Reed Act funds may be used to pay the administrative expenses of the employment security program. (See Part E. for exception for use of Reed Act amounts allocated for fiscal years 2000, 2001, and 2002.)

Initially, Reed Act funds were available for administrative expenses up to 5 years from the date they were first credited to a State’s account. Through amendments, the time period for administrative use was later extended to 10, 15, 25, and 35 years, and then eliminated effective October 1, 1991.

2. Relationship to Trust Fund Operations. Reed Act funds become a part of a State’s unemployment fund, as defined in Section 3306(f) of the Federal Unemployment Tax Act (FUTA), on the date they are transferred to the State’s account in the UTF. Such funds retain legal status as a part of the State’s unemployment fund and must be accounted for as part of the fund until expended for unemployment compensation or administrative expenses of the State’s employment security program. As such, Reed Act funds are subject to the “immediate deposit” and “limited withdrawal”

standards (Sections 303(a)(4) and (5), SSA; Sections 3304(a)(3) and (4), FUTA) applicable to all State unemployment fund money.

B. Mechanics of a Reed Act Distribution

1. Conditions Necessary for Making Transfers. Whenever the Secretary of Labor has reason to believe that conditions which are necessary for a Reed Act transfer will occur in the next fiscal year, the Secretary, after consultation with the Secretary of the Treasury, shall report to Congress with a recommendation for appropriate action (Section 902(c), SSA). Section 903(a)(1) provides that a transfer of Reed Act funds will occur if the following conditions exist in the Federal accounts of the UTF at the end of a Federal fiscal year (that is, September 30):

a. The balance of funds in the extended unemployment compensation account (EUCA) and the Federal unemployment account (FUA) have reached their statutory ceilings, and all general revenue advances and related interest to these accounts have been repaid, and

b. There remains in the employment security administration account (ESAA) an amount in excess of the account’s statutory ceiling.

The excess amount in the ESAA is then transferred to State accounts in the UTF at the beginning of the following Federal fiscal year, as explained below.

2. Amounts Transferred to State Accounts. Each State’s share of the amount to be transferred is based on the proportion of wages subject to FUTA attributable to the State during the preceding calendar year to the aggregate amount of wages subject to FUTA during the same year for all States. The exact share for each State is derived by applying its computed ratio or percentage to the total amount to be transferred. (See Part B.3. for exception for calculating State shares with respect to amounts for Federal fiscal years ending in 1999, 2000, and 2001.) The Secretary of Labor determines the amount of each State’s share and certifies it to the Secretary of the Treasury. (Section 903(a)(2), SSA.)

3. Special Distribution with Respect to Federal Fiscal Years 1999, 2000, and 2001. The Balanced Budget Act of 1997 (BBA) amended Section 903 of the SSA to cap the total amount of Reed Act transfers made with respect to Federal Fiscal years ending in 1999, 2000, and 2001 at \$100,000,000 per year. Each State’s share of the amount to be transferred will be based on the ratio of the amount of “funds to be allocated to such State for such fiscal year pursuant to the base allocation formula under

title III”, SSA, to “the total amount of funds to be allocated to all States for such fiscal year pursuant to the base allocation formula under Title III.” (Section 903(a)(3), SSA.)

4. Limitations on Transfers.

All States share in a Reed Act transfer. However, under Section 903(b), SSA, the total amount of a State’s share may not be credited to its UTF account in the following two instances:

a. The Secretary of Labor finds that on October 1 of the year in question, a State is not eligible for certification under Section 303, SSA, or the law of the State is not approvable under Section 3304, FUTA.

In this instance, the State’s share of Reed Act funds is credited to the FUA and held in reserve. If the Secretary of Labor certifies that the State is eligible for certification under Section 303, SSA, and/or that its law is approvable under Section 3304, FUTA, before the end of the fiscal year, the State’s Reed Act share is then transferred to its account. However, such delayed credits, although designated for the State, earn interest for the State only from the date credited, because they are not a part of the State’s individual account until credited. If certification and/or approval is not received before the end of the fiscal year, the amount that would have been transferred to the State’s account remains in the FUA and becomes unrestricted as to its use as a part of that account.

b. On October 1, a State has an outstanding balance of advances under Title XII, SSA. (See Part C.2.)

The State’s Reed Act share is reduced (but not below zero) by the balance of unpaid Title XII advances. The amount of the reduction is transferred to or retained in the FUA and serves to reduce the State’s balance of outstanding advances. If the State’s Reed Act share has not been reduced to zero, the remaining amount is credited to its UTF account.

C. Use of Reed Act Funds for UC Benefit Payments

1. Use under Normal Circumstances. Section 903(c)(1), SSA, imposes no requirements on a State’s use of Reed Act funds for benefit payments. For this purpose, funds are withdrawn from the State’s UTF account as are any other funds in the account. Logically, a State would first expend other available funds for benefits in order to preserve its Reed Act balance, which can be used for either benefits or, under specified conditions, administrative expenses. Therefore, the Department of Labor (DOL) assumes that as long as the balance of funds in a State’s UTF

account exceeds its unexpended balance of Reed Act allocations, the total unused Reed Act balance remains within the account. (See Part E. for exceptions for use of amounts allocated for fiscal years 2000, 2001, and 2002.)

2. *Use upon Obtaining a Title XII Advance.* Section 1201, SSA, provides a system of "Title XII" advances to States with temporarily depleted unemployment compensation reserves. One of the requirements for a State to qualify for an advance is that the amount of the advance be determined by considering all other amounts available in the State's unemployment fund for benefit payment. (Section 1201(a)(3)(B), SSA.) This includes, as explained below, unobligated Reed Act funds. Therefore, upon obtaining a Title XII advance, a State's unexpended Reed Act funds become subject to expenditure for benefits without regard to whether they have been appropriated or, except as provided below, obligated for an administrative expense. (See Part E. for exceptions for use of amounts transferred with respect to Federal fiscal years 1999, 2000, and 2001.)

3. *Procedures to Set Aside Obligated Amounts* Amounts validly obligated, under appropriations made consistently with the Reed Act, are considered to be unavailable for any other purpose, including the payment of benefits upon obtaining a Title XII advance. To assure availability for expenditure when obligations mature, Reed Act funds, which are properly obligated for an administrative expense *prior* to obtaining an advance, may be made unavailable for benefit payment *if* the State elects to set aside such amounts in a UTF Reed Act "sub-account". This set aside provision does not apply to appropriated funds prior to actual obligation, because an appropriation specifies only the purpose for which funds may be expended and does not create transactions which require a payment of money. Funds residing in a Reed Act sub-account are not considered available for benefits and are not taken into account by DOL or Treasury for Title XII purposes, if properly set aside in such a sub-account. The procedures to set aside obligated amounts are as follows:

a. To establish an initial credit to a sub-account a State must:

1. Review each current Reed Act obligation under which there is an unexpended balance and validate the:
 - Date of enactment of the enabling appropriation (see part D.1.),
 - Date and amount of each obligation (see part D.2.), and
 - Unexpended balance of each obligation amount;

2. Prepare a letter certifying the amount of unexpended Reed Act obligations as of the end of the month being used to establish the initial credit. This amount must agree with transactions reported on Form ETA 8403, *Summary of Financial Transactions—Title IX Funds* ("Reed Act" Money) submitted for the same month. (The total of column III(b) less the total of column IV(a) must equal the amount of unexpended obligations.) As documentation, attach a summary sheet identifying each appropriation under which there is an unexpended obligation amount. For each appropriation, indicate the purpose, dollar amount, enactment date, legislative bill number, and the current total dollar amount obligated.

The letter and attachment should be addressed to: U.S. Department of Labor, Employment and Training Administration, Attention: TEUFA, 200 Constitution Avenue, N.W., Rm C-4512, Washington, D.C. 20210.

DOL will then certify the same to U.S. Treasury, subject to review of the State's documentation.

b. To provide for on-going maintenance of the sub-account, a State must:

1. Certify to DOL by letter on a monthly basis all new obligation amounts and all deobligated amounts. The letter must specify the effective date of each obligation or deobligation and identify the corresponding appropriation(s) and/or related obligation(s) by amount and effective date. The letter must be received by the tenth business day of the month following the month in which the transaction occurred and be accompanied by a Form ETA 8403 for the appropriate month:

2. When requisitioning funds from the State's UTF account, specifically identify withdrawal amounts requested from the Reed Act sub-account;

3. Include all Reed Act sub-account transactions on Form ETA 8403 for the month in which the transaction(s) occur; and

4. Include all Reed Act redeposits and withdrawals on each month's written confirmation letter to Treasury of UTF account activities.

As new obligations are made or as obligations are cancelled, the amounts obligated or deobligated will be certified in a similar manner and credited or deducted from the State's Reed Act sub-account. Withdrawals to pay Reed Act obligations, as specified by State requisitions, will be charged against the Reed Act sub-account.

4. *Restoration of Funds Used for Benefits.* Each expenditure of Reed Act

funds, whether for benefits or administrative costs, reduces the amount available for appropriation in accordance with Section 903(c)(2), SSA. Under certain conditions described in Section 903(c)(3), SSA, funds used to pay benefits may be restored to availability for administrative purposes:

- The Governor of a State must submit a request for restoration of such funds to the Secretary of Labor,
- Funds to be restored must have been used for benefits,
- The amount to be restored does not exceed the balance in the State's UTF account, and
- The State's unemployment fund must be free of outstanding Title XII advances when the request is made.

a. Determining amount to be restored. States which used Title XII advances must determine the amount of Reed Act funds used for benefits. A "pre-approved" amount of a Title XII advance is designated for a State for a specific month. However, other than the amount set aside in a Reed Act sub-account, U.S. Treasury procedures take into account a State's entire UTF account balance (including Reed Act funds which have not been set aside in a Reed Act sub-account), which must be reduced to zero prior to calculating the actual amount of an advance and transferring it to the State.

- The balance of Reed Act funds (not set aside in a Reed Act sub-account) in the State's account on the date in the first month any portion of a Title XII advance was actually used is the amount of Reed Act funds used for benefits and eligible for restoration.

- If, after an initial advance and the resulting expenditure of Reed Act funds for benefits, funds are recovered through amortization (see Part F.) and deposited in a State unemployment fund in any subsequent month as Reed Act redeposits, then such redeposited amounts are also considered to have been used for benefits if the State uses any portion of a Title XII advance during that month. However, if the State does not use any portion of a subsequent advance in a month in which a redeposit is made, the redeposited amount remains in the State's account as Reed Act funds but must be used only to pay benefits while there is an outstanding balance of advances.

Example: On February 1, 1997, a State has a \$500,000 balance of Reed Act money in its account in the UTF, none of which has been set aside in a Reed Act sub-account. A Title XII advance in the amount of \$5,000,000 has been approved for use by the State during February. On February 9, the balance in the State's account is \$700,000 and the State

requests a withdrawal of \$2,000,000. To transfer the State's requisition of \$2,000,000, the U.S. Treasury first deducts the remaining \$700,000 from the State's account (which includes the \$500,000 Reed Act balance), thereby reducing the State's account balance to zero; it then adds to the account \$1,300,000 from the \$5,000,000 Title XII advance for February, which it transfers to the State along with the original \$700,000. At this time, the \$500,000 in Reed Act money is deemed to have been used for benefits. During March and April, the State redeposits \$100,000 to its UTF account received as amortization payments on a Reed Act financed building. This money is available for obligation for administrative expenses after the State repays all advances, because under Section 903(c)(2), SSA, Reed Act funds may not be obligated while there is a outstanding balance of Title XII advances. If the State does not borrow again and repays all outstanding Title XII advances, the Governor may request restoration of the \$500,000 used for benefits in February 1997. If the State borrows again in April, the \$100,000 would also be used for benefits. Therefore, after all advances are repaid, the Governor may request restoration of the \$500,000 used for benefits in February 1997 and the \$100,000 used for benefits in April 1997.

b. Procedures for restoration of funds.

States desiring restoration of Reed Act funds must prepare and submit:

- Form ETA 8403, indicating when funds were used for benefits by showing dates (month, year) in column I and the appropriate amounts as negative figures in column II of the report; and
- A letter from the Governor of the State to the Secretary of Labor (1) stating that the State's unemployment fund is free of Title XII obligations and contains funds at least equal to the amount to be restored, and (2) specifying amounts to be restored pursuant to Section 903(c)(3), SSA.

If the Secretary of Labor determines that:

- Amounts requested for restoration: (1) were used to pay benefits and (2) do not exceed the amount in the State's UTF account, and
- All Title XII advances were repaid as of the request date;

then the Secretary will notify the Governor that the restoration is approved. Restoration shall be effective on the first day of the month following the date of the Secretary's notice.

D. Use of Reed act funds for Administrative Purposes

1. *Legal Requirements.* Reed Act funds may be used for administrative expenses of the employment security program only if a State adheres to the requirements specified in Section 903(c)(2), SSA. (See Part E. for exception for use of amounts allocated for fiscal years 2000, 2001, and 2002.)

The State legislative body must authorize the use of Reed Act money by specific appropriation. The appropriation law: (1) Must specify the purpose and the amount of the appropriation, (2) may not authorize obligation of funds after the close of the two-year period which began on the date of enactment of the law, and (3) must limit the amounts which may be obligated to the balance of unobligated Reed Act funds in the State's unemployment fund. Funds must be withdrawn from the State's unemployment fund and expended after the date of enactment and must be accounted for in accordance with standards established by the Secretary of Labor. (See Attachment II, *Draft Language for State Laws in appropriating Reed Act funds for administrative purposes.*)

2. Guidelines for Use.

a. Specificity and Limitation

Requirements of an Appropriation Act. A State appropriation act authorizing the use of Reed Act funds must (1) limit the use of funds appropriated exclusively to administrative expenses of the employment security program and (2) specify the purpose for which the funds are appropriated and the amount appropriated for each purpose. For example, the purpose of an appropriation law might be: "To conduct a special, statewide, intensive audit of employer payrolls in the construction industry".

When a State agency is administering other programs in addition to the employment security program (e.g., a disability insurance program), no part of the expenses of administering the other programs may be paid with Reed Act funds. When funds are appropriated for a purpose for which only a part is related to employment security, the appropriation law must specify the employment security share and the amount of Reed Act funds to be used.

Although an appropriation of Reed Act funds may exceed the balance of available Reed Act funds at the time of the appropriation (see part D.2.c.), the appropriation law must specify that the amount which may be obligated at any time may not exceed the balance of Reed Act funds available *at the time of obligation* in the State's unemployment fund.

b. *Two-Year Limit for Obligating Funds.* The two-year time limit imposed by Section 903(c)(2)(B), SSA, within which Reed Act funds appropriated by State law must be obligated begins on the date of enactment of the appropriation law, not the date as of which funds were transferred to the State's UTF account. The appropriation

law must be worded so that it is clear that funds appropriated are not available for obligation after the two-year period. The term, "date of enactment", as used in Section 903(c)(2), SSA, means the date on which an act passed by the State legislature becomes law. The determination of the date when such an act becomes law is a question for the appropriate State authority. In some instances, State courts have held that the effective date of an act is the date of enactment. However, the substitution of "effective date" for the term "date of enactment" in Reed Act legislation should be avoided, since an interpretation of State law will be required to determine whether the appropriation law meets the requirements of Section 903(c)(2)(B), SSA, if "effective date" is used. The general rule is that the date of enactment is the date on which the act is approved by the Governor of the State. Money is "obligated" and an "obligation" is created when an order is placed, a contract is awarded, or other transactions are entered into which require a current or future payment of money. The use of the term "obligate" instead of "expenditure" in Reed Act appropriations is recommended for consistency with Section 903(c)(2)(B). The use of such terminology also allows greater flexibility in handling Reed Act funds; money obligated before the expiration of the two-year limit may be expended any time afterward.

c. *Appropriation in Anticipation of Future Reed Act Availability.* A State legislature is not prohibited from appropriating Reed Act funds in anticipation of a future availability of Reed Act funds. However, such funds may not be obligated prior to becoming available even though they have been properly appropriated by act, the enactment date of which precedes the date of funds becoming available.

d. *ETA Administrative Requirements Not Applicable.* Although Reed Act funds may be used for an administrative expense of the employment security program, Section 903(c)(2), SSA, does not, as do Sections 303(a) and 303(a)(8), SSA, require that the expenditure be for a purpose or in an amount found necessary for proper and efficient administration by the Secretary of Labor. Further, since Reed Act funds are not granted funds, the administrative requirements related to the use of grant funds at 29 Code of Federal Regulations (CFR) Part 97 and OMB Circular No. A-87 (60 *Federal Register* 26484 (May 17, 1995)) with respect to the expenditure of Wagner-Peyser Act and Title III funds (granted funds) are not applicable to the expenditure of Reed Act funds.

Nevertheless, Reed Act funds must be expended consistent with Sections 903(c) (1) and (2), SSA. Further, where Wagner-Peyser and granted funds are to be used to reimburse Reed Act expenditures for certain permissible purposes, DOL prior approval may be required for such use of granted funds. (See part F.)

e. Restrictions on Withdrawal of Funds. Reed Act funds may not be withdrawn from a State's unemployment fund for administrative expenses, and expenses may not be incurred until after the enactment date of the appropriation law. In addition, funds may not be withdrawn prior to obligation. The withdrawal of Reed Act funds must adhere to the U.S. Treasury-State Agreement under the Cash Management Improvement Act of 1990 (CMIA).

Funds may be withdrawn only in amounts necessary to pay mature obligations. (Section 303(a)(5), SSA; Section 3304(a)(4), FUTA.) An obligation is mature when payment is due either by reimbursement of expenses or contractual agreement for advance payments. Reed Act funds withdrawn may be mingled with other administrative funds (granted funds) if separate book accounts are maintained by the State agency to identify the balance of Reed Act funds at all times.

3. Use of Reed Act Interest Credits. Since Section 903(c)(2)(D), SSA, limits the amount which may be obligated for administration to amounts transferred to the State's account, interest credits attributable to the amount of Reed Act funds in the State's UTF account may not be appropriated, obligated, expended, or disbursed for administrative purposes.

4. Investment of Reed Act Funds Not Permissible. Except as provided under the CMIA, investment is not one of the purposes for which money withdrawn from a State unemployment fund may be used. Since Reed Act funds are a part of the State's unemployment fund, a State law which permits investment of such funds is inconsistent with Section 303(a)(5), SSA, and Section 3304(a)(4) of FUTA. It was the intent of Congress, as indicated by Section 904, SSA, that money in the UTF may be invested only by the Secretary of Treasury. This intent is effectuated only by assuring that Reed Act moneys remain in the UTF.

E. Use of Reed Act Funds Allocated for Fiscal Years 2000, 2001, and 2002

The BBA of 1997 amended paragraph (2) of Section 903(c) of the SSA, by adding the following sentence: "Any amount allocated to a State under this section for fiscal year 2000, 2001, or

2002 may be used by such State only to pay expenses incurred by it for the administration of its unemployment compensation law, and may be so used by it without regard to any of the conditions prescribed in any of the preceding provisions of this paragraph."

Unlike previous Reed Act transfers, States are prohibited from using Reed Act funds allocated for these three years for the payment of UC benefits or the administration of State public employment offices. However, States may, among other uses, use these Reed Act funds for purchasing real property for UC purposes and may amortize these purchases against UC grant funds. (See Parts G. and H.) Additionally, the restrictions applicable to Reed Act funds in section 903(c)(2), SSA, are not applicable to amounts allocated for fiscal years 2000, 2001, and 2002. This means that the amounts transferred to States for these three years may be used without obtaining an appropriation from the State's legislative body, as discussed in Parts D.1. and D.2., above. States must amend their UC laws to prohibit the use of Reed Act funds allocated for fiscal years 2000, 2001, and 2002 for the payment of UC benefits and may further amend their UC laws to authorize the use of such funds for UC administrative purposes without a specific appropriation from their State legislatures. (See Attachment II, *Draft Language for State Laws*.)

F. Use of Reed Act Funds for Voter Registration Activities

Under the National Voter Registration Act (NVRA) of 1993, States are permitted to designate State UC and ES offices as voter registration agencies. Reed Act funds may be used to pay for the administration of a State's UC law and public employment office. Since, under the SSA, voter registration activities are not necessary for the administration of the State's UC law, Reed Act funds may not be used for those activities. However, since Section 7(a)(3)(B) of the Wagner-Peyser Act authorizes SESAs to use ES grant monies for "developing linkages between services funded under this Act and related Federal or State legislation", if an ES office is designated as a voter registration agency under the NVRA, then voter registration activities of that ES office are legitimate ES administrative expenses chargeable to ES grants. Therefore, Reed Act funds may be used to pay for these voter registration activities.

Note: As illustrated in F., the use of Reed Act funds for SESA administrative expenses is permissible for purposes other than those specifically mentioned in this discussion.

G. Use of Reed Act Funds to Acquire Real Property

1. Acquisition of Real Property Deemed an Expense of Administration. Reed Act funds may be used to acquire land and to purchase or construct a building for use and occupancy by the State employment security agency consistent with Section 903(c)(2), SSA. This is an expense of employment security administration. The following are special conditions applicable to this use of Reed Act funds:

a. Space. Since Reed Act funds may be used only for employment security purposes, such funds may be used to pay only for that part of the land and building space costs which are directly related to employment security purposes, e.g., that part of the cost of a building as is represented by the proportion of the total space occupied and used by the employment security agency for employment security purposes, including the cost of agency functions and other agency programs and activities which jointly benefit Wagner-Peyser Act and unemployment compensation programs.

Reed Act funds may not be used to pay for more land or building space than is needed for employment security purposes. However, funds may be used to purchase or construct a building large enough to provide space for future expansion that reasonably can be anticipated at the time of purchase or construction.

b. Rental of Space. Extra space which is available through the purchase or construction of a building large enough for reasonable expansion purposes may be leased until the time it is required for agency use. Income from the lease may be deposited in the State's UTF account but may not be credited as Reed Act funds. Income from a lease may not be credited as Reed Act funds because only amounts transferred to the State's account under Section 903(a)(1), SSA, have "Reed Act" status. If the cost of the space is being amortized with grant funds, the income from the lease must be prorated between the State's UTF account and use to reduce the State's grant costs, in accordance with 29 CFR 97.25, and the annual grant agreement.

2. Disposition of Real Property and Subsequent Use of Proceeds. Real property acquired with Reed Act funds, which has not been amortized with grant funds (see part F.), may be sold or otherwise disposed of without obtaining DOL approval or disposition instructions. When unamortized real property is no longer needed for its originally authorized employment security purpose, States are expected to

use good business judgment in disposing of such property. Proceeds from such disposal must be returned to the State's UTF account. The proceeds will be credited as Reed Act funds up to the amount of the original expenditure, because only amounts transferred to the State's account under Section 903(a)(1), SSA, have Reed Act status.

When real property acquired with Reed Act funds and wholly or partially

amortized with grant funds is no longer needed for its originally authorized employment security purposes, it must be sold, exchanged for replacement property, or otherwise disposed of as directed by DOL disposition instructions (29 CFR Part 97.31(c)). Example A illustrates the sale of real property which was purchased with both non-Federal funds and Reed Act funds, with a portion of the Reed Act

funds have been amortized with DOL grant funds.

Example A: Thirty-five years ago, \$1 million of Reed Act funds and \$1 million of other non-Federal funds were used to acquire real property at the cost of \$2 million for employment security purposes. Over the years, seventy percent (70%) of the Reed Act funds were amortized with DOL grant funds. Today, the real property is being sold for \$6 million. The distribution of the respective equities is based on the following computations.

Share of Each Fund Source Based on Adjusted Contributions to Cost:

Other Funds (\$2,000,000 less \$1,000,000)	\$1,000,000	=	50%
DOL Grant Funds (70% x \$1,000,000)	700,000	=	35%
Reed Act Funds (\$1,000,000 less \$700,000)	300,000	=	15%
Total Cost	2,000,000		100%

Equity in Property by Fund Source:

Other Funds equity (50% x \$6,000,000)	\$3,000,000
DOL equity (35% x \$6,000,000)	2,100,000
Reed Act equity (15% x \$6,000,000)	900,000
Total Sale Proceeds	6,000,000

(29 CFR 97.31(c)(2).)

See Part F.1. for an explanation of how DOL (Federal) equity was created in the property.

a. *Replacement.* A State may use proceeds from the sale of real property as an offset to the purchase price of a replacement property. In a replacement transaction, it is not necessary to make another appropriation of Reed Act funds to obtain the replacement property if the use of such funds conforms in all respects to the original appropriation authorizing the acquisition of the disposed property and is permissible under State law. In the interpretation of State Reed Act appropriations, the State is the final arbiter of its State law. Such transactions may not result in a new obligation of Reed Act funds. If the property being replaced is worth more than the replacement, the excess cash proceeds received or equivalent cash shall be handled as in Part 2.b.

b. *Use of Cash Proceeds.* The Reed Act share of cash proceeds received from the sale or other disposition of real property must immediately be deposited in the State's account in the UTF (Section 303(a)(4), SSA, and Section 3304(a)(3), FUTA). Similarly, any portion of the Reed Act proceeds from a disposition that is not used for replacement property must be immediately deposited in the State's UTF account. However, only proceeds equivalent to the original cost of the property may be credited to the State's account as Reed Act funds. Earnings or profit resulting from real estate transactions may not be credited as Reed Act funds because only amounts transferred to a State as provided in Section 903(a)(1), SSA, have "Reed Act" status. The remainder of cash proceeds, if any, must be used for the payment of unemployment benefits or other expenditures consistent with the withdrawal standard. Failure to immediately deposit the applicable proceeds into the UTF may be cause for the Secretary of Labor to commence conformity/compliance proceedings and to assess interest on the amount outstanding. Example B illustrates the proper distribution of the Reed Act share of sales proceeds in Example A.

Example B:

Distribution of Reed Act Share of Sales Proceeds:

Reed Act contribution to acquisition cost	\$1,000,000
Less: Adjusted grant funds contribution to (amortization of) acquisition cost	700,000
Adjusted Reed Act Contribution	300,000
 Reed Act equity in sales proceeds	 900,000
Less: Adjusted Reed Act contribution (credited to UTF as Reed Act funds)	300,000
 Balance of Reed Act equity (credited to UTF for payment of unemployment compensation and other expenditures consistent with the withdrawal standard)	 600,000

H. Reimbursement of Reed Act Expenditures From Granted Funds

1. *Extent of Reimbursement.* UI and ES grant funds may be used to reimburse the State's Reed Act expenditures to the extent that the costs meet the requirements for use of funds authorized by the Wagner-Peyser Act and Title III. (29 CFR Part 97; OMB Circular No. A-87.) To date,

reimbursement through amortization arrangements has been authorized for:

- the cost of obtaining land and constructing or purchasing a building for employment security purposes (real property),
- capital improvements to State-owned office buildings, to the extent such buildings are used for employment security purposes, and

- the acquisition of automatic data processing (ADP) installations.

Reed Act funds expended for the above purposes may be amortized with grant funds because these expenditures meet the administrative requirements related to the use of grant funds at 29 CFR Part 97 and OMB Circular No. A-87 with respect to the expenditure of Wagner-Peyser Act and Title III funds.

The amortization of Reed Act expenditures for the acquisition of real property and capital improvements with grant funds creates Federal equity. "Federal equity" means the Federal government owns a share of the fair market value of real property. Therefore, when the property ceases to be used for employment security purposes, DOL recaptures the Federal equity. The value of the Federal equity is based on the adjusted contribution of UI and ES grant funds to the acquisition cost of the property and any capital improvements that materially increase the value or useful life of real property.

2. Deposit and "Reappropriation" of Reimbursed Reed Act Funds. Grant funds used to reimburse a State for Reed Act expenditures must be deposited immediately to the State's UTF account (Section 303(a)(4), SSA; Section 3304(a)(3), FUTA), and credited to Reed Act funds used in the project. Where a reimbursement relates to a particular project within an appropriation involving two or more years of Reed Act allocations, the reimbursement is applied first to the earliest Reed Act allocation used in the project and thereafter to the next earliest in consecutive order. Reimbursed funds may be "reappropriated" by the State legislature for other Reed Act administrative purposes.

I. Unemployment Trust Fund (UTF) Transactions

1. Withdrawal of Reed Act Funds. U.S. Treasury requirements and procedures for withdrawal of Reed Act funds from a State's UTF account for payment of benefits and administrative expenses are the same as for regular benefit funds through Treasury's on-line requisition system. To withdraw Reed Act funds which have not been "set aside" in a Reed Act sub-account, the State must include the amount being withdrawn in the total requisition for regular benefits. There is a specific line on the electronic requisition screen for withdrawal of Reed Act funds which have been "set aside" in a Reed Act sub-account. The total amount of administrative Reed Act funds being withdrawn and the account and location of its deposit must be noted in the "special instructions" section of the screen.

2. Deposit of Reed Act Fund Reimbursements. As noted in part F.2., grant funds used to reimburse Reed Act expenditures must be returned immediately to the State's UTF account. The following are procedures for deposit of such reimbursements:

- The State agency must prepare a voucher against the administrative fund

account in the amount of the reimbursement to be made.

- The "payee designation" must be the State employment security agency, or whatever designation is appropriate to permit deposit to the clearing account.

- After deposit to the clearing account, the reimbursement must be included in the next transfer of funds from the clearing account to the State's UTF account.

The same procedures for depositing reimbursement amounts will be used for returning any Reed Act funds which have been withdrawn for an administrative purpose but not used. (See part D.2.e.)

J. Accounting for Reed Act Funds

1. Accounting Records. Each State agency will maintain an accounting system with respect to Reed Act funds which will provide information for required DOL reports. The accounting records will contain:

- a. Date and amount of each allocation or transfer of Reed Act funds to the State's UTF account, identified by fiscal year and totalled.

- b. Date and amount of each expenditure of Reed Act funds for benefits and the fiscal year in which the funds charged with such expenditure were transferred to the State's account.

- c. For each appropriation of Reed Act funds for costs of administration:

- Date of enactment of the appropriation law;
- Amount appropriated by the appropriation law;
- Date and amount of each obligation and expenditure of Reed Act funds with respect to each project authorized by the appropriation law and the Reed Act funds against which each obligation is charged;

- Date and amount of each withdrawal from the UTF account with respect to each project authorized by the appropriation law;

- Date and amount of each return (and credit) to the UTF account of withdrawals not expended;

- Date and amount of all receipts from the sale or other disposition of an employment security building financed with Reed Act funds or the lease of space therein;

- Date and amount of each reimbursement of Reed Act funds by way of amortization with grant funds with respect to each project authorized by the appropriation law; the crediting of each reimbursement to the UTF account, and the balance which remains to be reimbursed (or amortized); and

- Total of funds obligated pursuant to each appropriation, the total

unobligated balance of each appropriation, and total charges against Reed Act funds.

- d. Control totals for each transaction recorded for each appropriation in c. above.

- e. Each entry in the records must be supported by appropriate documentation, and reference to such documentation must be made in the records.

2. Approval of Vouchers.

Each obligation and voucher for expenditure of Reed Act funds appropriated for expenses of employment security administration must be approved by the administrative head of the State agency or a duly authorized agent. All such documents or certified duplicates or copies thereof will be filed in the administrative office of the State agency.

K. Reed Act Funds Reporting Requirements

All transactions involving Reed Act funds must be reported on Form ETA 8403, *Summary of Financial Transactions—Title IX Funds ("Reed Act" Money)* in accordance with instructions in ET Handbook No. 401, Section III, Chapter 2. Redeposits to and withdrawals from the UTF account are also reported on lines 14 and 41, respectively, of Form ETA 2112, *UI Financial Transaction Summary*. Instructions for Form ETA 2112 are contained in ET Handbook No. 401, Section II, Chapter 1.

L. OMB Approvals

Reporting requirements for Form ETA 8403, *Summary of Financial Transactions—Title IX Funds ("Reed Act" Money)* and Form ETA 2112, *UI Financial Transaction Summary* are approved by the Office of Management and Budget (OMB) under OMB Approval No. 1205-0154 (expiration date: February 28, 2000). OMB Approval is being sought for procedures to request restoration of Reed Act funds used for benefits (part C.5.b.) and procedures to establish and provide on-going maintenance to a Reed Act "sub-account" (part C.4.). When approval is received for these collections, notification will be issued.

Note: States are not required to respond to these collections of information unless a currently valid OMB approval number is in effect.

Attachment II—Draft Language for State Laws

I. Draft Statutory Language

The following language will allow States to use either of the Reed Act

appropriation alternatives provided after this draft statutory language.

(f) *Money credited under Section 903 of the Social Security Act.*

(1) Money credited to the account of this State in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to Section 903 of the Social Security Act may not be requisitioned from this State's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this State's unemployment compensation law and public employment offices. Such money may be requisitioned pursuant to Section [insert section referring to withdrawals from the Unemployment Trust Fund] for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this State's unemployment compensation law and public employment offices but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the date of enactment of an appropriation law which specifies the purpose(s) for which such money is appropriated and the amount(s) appropriated therefor. Such appropriation is subject to the following conditions:

(A) The period within which such money may be obligated is limited to a period ending not more than two years after the date of the enactment of the appropriation law; and

(B) the amount which may be obligated is limited to an amount which does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of this State pursuant to Section 903 of the Social Security Act exceeds, (ii) the aggregate of the amounts used by this State pursuant to this Act and charged against the amounts transferred to the account of this State.

(2) For purposes of subsection (1)(B), the amounts obligated under an appropriation for the above-described administrative purposes shall be charged against transferred amounts at the exact time the obligation is entered into.

(3) The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(4) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and,

upon requisition, shall be deposited in the employment security administration fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment fund and, if it will not be immediately expended, shall be returned promptly to the account of this State in the Unemployment Trust Fund.

(5) Notwithstanding paragraph (1), moneys credited with respect to Federal fiscal years 1999, 2000, and 2001, shall be used solely for the administration of the UC program and are not subject to appropriation by the legislature.

II. Draft Appropriation Language

Two suggested Reed Act appropriation bills are presented. Either bill may be used with the draft statutory language presented earlier. The first permits States with statutory Reed Act provisions to incorporate the requirements of Section 903(c)(2), SSA, by simply referencing these statutory provisions. This approach may be better for States where the Reed Act appropriation may be contained in a larger appropriation act or where State appropriation law limits the content of any single appropriation bill. The second details the requirements of Section 903(c)(2) and is similar to Reed Act appropriation bills recommended by this Department in the past. Since Reed Act moneys transferred with respect to Federal fiscal years 1999, 2000, and 2001, need not be appropriated by the State legislature, States need not follow this draft language for such moneys.

Alternative 1

AN ACT APPROPRIATING MONEY FOR ERECTING A BUILDING FOR USE BY [Name of State employment security agency]

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [Name of State]

SEC. 1. There is hereby appropriated out of funds made available to this State under Section 903 of the Social Security Act, as amended, the sum of \$_____, or so much thereof as may be necessary, to be used, under the direction of the [name of State employment security agency or the agency responsible for building construction] and subject to the requirements of Section [reference section of State code containing Reed Act provisions] of the State Code, for the purpose of acquiring land and erecting a building thereon for the use of [name of State employment security agency] and for such improvements, facilities, paving, landscaping, and fixed

equipment¹ as may be required for its proper use and for operation by the [name of State employment security agency].

SEC. 2. Section 1 shall take effect and be in force from and after passage.

Alternative 2

AN ACT APPROPRIATING MONEY FOR ERECTING A BUILDING FOR USE BY [Name of State employment security agency]

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [Name of State]

SEC. 1. There is hereby appropriated out of funds made available to this State under Section 903 of the Social Security Act, as amended, the sum of \$_____, or so much thereof as may be necessary, to be used, under the direction of the [name of State employment security agency or the agency responsible for building construction], for the purpose of acquiring land and erecting a building thereon for the administration of this State's unemployment compensation law and public employment offices and for such improvement, facilities, paving, landscaping, and fixed equipment² as may be required for its proper use and operation.

SEC. 2. No part of the money hereby appropriated may be obligated after the expiration of the 2-year period beginning on the date of the enactment³ of this act.

SEC. 3. The amount obligated⁴ pursuant to this act shall not exceed at any time the amount by which (a) the aggregate of the amounts transferred to the account of this State pursuant to Section 903 of the Social Security Act exceeds (b) the aggregate of the amounts obligated for administration and paid out for benefits and required by law to be charged against the amounts transferred to the account of this State.

SEC. 4. This Act shall take effect and be in force from and after passage.

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¹ "Fixed equipment" refers to such things as a central heating and/or air conditioning plant which becomes an integral part of the building and may be included in the cost of the building reimbursable out of granted funds.

² See footnote ¹ above.

³ The Department of Labor recommends that the phrase "date of enactment" be used here, since Section 903(c)(2)(B) of the Social Security Act requires that use of the appropriated money be limited to a 2-year period beginning with such date.

⁴ Section 903(c)(2)(D) requires that this limitation be applied to money obligated, even though a State may choose to apply the 2-year limitation to expenditures.