

§ 1322. Repayment by State; certification; transfer; interest on loan; credit of interest on loan

(a) Repayment by State; certification; transfer

The Governor of any State may at any time request that funds be transferred from the account of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1321 of this title, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance.

(b) Interest on loan

(1) Except as otherwise provided in this subsection, each State shall pay interest on any advance made to such State under section 1321 of this title. Interest so payable with respect to periods during any calendar year shall be at the rate determined under paragraph (4) for such calendar year.

(2) No interest shall be required to be paid under paragraph (1) with respect to any advance or advances made during any calendar year if—

(A) such advances are repaid in full before the close of September 30 of the calendar year in which the advances were made,

(B) no other advance was made to such State under section 1321 of this title during such calendar year and after the date on which the repayment of the advances was completed, and

(C) such State meets funding goals, established under regulations issued by the Secretary of Labor, relating to the accounts of the States in the Unemployment Trust Fund.

(3)(A) Interest payable under paragraph (1) which was attributable to periods during any fiscal year shall be paid by the State to the Secretary of the Treasury prior to the first day of the following fiscal year. If interest is payable under paragraph (1) on any advance (hereinafter in this subparagraph referred to as the “first advance”) by reason of another advance made to such State after September 30 of the calendar year in which the first advance was made, interest on such first advance attributable to periods before such September 30 shall be paid not later than the day after the date on which the other advance was made.

(B) Notwithstanding subparagraph (A), in the case of any advance made during the last 5 months of any fiscal year, interest on such advance attributable to periods during such fiscal year shall not be required to be paid before the last day of the succeeding taxable year. Any interest the time for payment of which is deferred by the preceding sentence shall bear interest in the same manner as if it were an advance made on the day on which it would have been required to be paid but for this subparagraph.

(C)(i) In the case of any State which meets the requirements of clause (ii) for any calendar year, any interest otherwise required to be paid under this subsection during such calendar year shall be paid as follows—

(I) 25 percent of the amount otherwise required to be paid on or before any day during

such calendar year shall be paid on or before such day; and

(II) 25 percent of the amount otherwise required to be paid on or before such day shall be paid on or before the corresponding day in each of the 3 succeeding calendar years.

No interest shall accrue on such deferred interest.

(ii) A State meets the requirements of this clause for any calendar year if the rate of insured unemployment (as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970) under the State law of the period consisting of the first 6 months of the preceding calendar year equaled or exceeded 7.5 percent.

(4) The interest rate determined under this paragraph with respect to any calendar year is a percentage (but not in excess of 10 percent) determined by dividing—

(A) the aggregate amount credited under section 1104(e) of this title to State accounts on the last day of the last calendar quarter of the immediately preceding calendar year, by

(B) the aggregate of the average daily balances of the State accounts for such quarter as determined under section 1104(e) of this title.

(5) Interest required to be paid under paragraph (1) shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. If the Secretary of Labor determines that any State action results in the paying of such interest directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) from such unemployment fund, the Secretary of Labor shall not certify such State's unemployment compensation law under section 3304 of the Internal Revenue Code of 1986. Such noncertification shall be made in accordance with section 3304(c) of such Code.

(6)(A) For purposes of paragraph (2), any voluntary repayment shall be applied against advances made under section 1321 of this title on the last made first repaid basis. Any other repayment of such an advance shall be applied against advances on a first made first repaid basis.

(B) For purposes of this paragraph, the term “voluntary repayment” means any repayment made under subsection (a) of this section.

(7) This subsection shall only apply to advances made on or after April 1, 1982.

(8)(A) With respect to interest due under this section on September 30 of 1983, 1984, or 1985 (other than interest previously deferred under paragraph (3)(C)), a State may pay 80 percent of such interest in four annual installments of at least 20 percent beginning with the year after the year in which it is otherwise due, if such State meets the criteria of subparagraph (B). No interest shall accrue on such deferred interest.

(B) To meet the criteria of this subparagraph a State must—

(i) have taken no action since October 1, 1982, which would reduce its net unemployment tax effort or the net solvency of its unemployment system (as determined for purposes of section 3302(f) of the Internal Revenue Code of 1986); and

(ii)(I) have taken an action (as certified by the Secretary of Labor) after March 31, 1982,

which would have increased revenue liabilities and decreased benefits under the State's unemployment compensation system (hereinafter referred to as a "solvency effort") by a combined total of the applicable percentage (as compared to such revenues and benefits as would have been in effect without such State action) for the calendar year for which the deferral is requested; or

(II) have had, for taxable year 1982, an average unemployment tax rate which was equal to or greater than 2.0 percent of the total of the wages (as determined without any limitation on amount) attributable to such State subject to contribution under the State unemployment compensation law with respect to such taxable year.

In the case of the first year for which there is a deferral (over a 4-year period) of the interest otherwise payable for such year, the applicable percentage shall be 25 percent. In the case of the second such year, the applicable percentage shall be 35 percent. In the case of the third such year, the applicable percentage shall be 50 percent.

(C)(i) The base year is the first year for which deferral under this provision is requested and subsequently granted. The Secretary of Labor shall estimate the unemployment rate for the base year. To determine whether a State meets the requirements of subparagraph (B)(ii)(I), the Secretary of Labor shall determine the percentage by which the benefits and taxes in the base year with the application of the action referred to in subparagraph (B)(ii)(I) are lower or greater, as the case may be, than such benefits and taxes would have been without the application of such action. In making this determination, the Secretary shall deem the application of the action referred to in subparagraph (B)(ii)(I) to have been effective for the base year to the same extent as such action is effective for the year following the year for which the deferral is sought. Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort. Failure to do so shall result in the State being required to make immediate payment of all deferred interest.

(ii) Increases in the taxable wage base from \$6,000 to \$7,000 or increases after 1984 in the maximum tax rate to 5.4 percent shall not be counted for purposes of meeting the requirement of subparagraph (B).

(D) In the case of a State which produces a solvency effort of 50 percent, 80 percent, and 90 percent rather than the 25 percent, 35 percent, and 50 percent required under subparagraph (B), the interest shall be computed at an interest rate which is 1 percentage point less than the otherwise applicable interest rate.

(9) Any interest otherwise due from a State on September 30 of a calendar year after 1982 may be deferred (and no interest shall accrue on such deferred interest) for a grace period of not to exceed 9 months if, for the most recent 12-month period for which data are available before the date such interest is otherwise due, the State had an average total unemployment rate of 13.5 percent or greater.

(10)(A) With respect to the period beginning on February 17, 2009, and ending on December 31, 2010—

(i) any interest payment otherwise due from a State under this subsection during such period shall be deemed to have been made by the State; and

(ii) no interest shall accrue during such period on any advance or advances made under section 1321 of this title to a State.

(B) The provisions of subparagraph (A) shall have no effect on the requirement for interest payments under this subsection after the period described in such subparagraph or on the accrual of interest under this subsection after such period.

(c) Credit of interest on loan

Interest paid by States in accordance with this section shall be credited to the Federal unemployment account established by section 1104(g) of this title in the Unemployment Trust Fund.

(Aug. 14, 1935, ch. 531, title XII, §1202, as added Aug. 5, 1954, ch. 657, §3, 68 Stat. 672; amended Pub. L. 86-778, title V, §522(a), Sept. 13, 1960, 74 Stat. 979; Pub. L. 97-35, title XXIV, §2407(a), (b)(2), Aug. 13, 1981, 95 Stat. 879, 880; Pub. L. 97-248, title II, §274(a), Sept. 3, 1982, 96 Stat. 557; Pub. L. 98-21, title V, §§511, 514, Apr. 20, 1983, 97 Stat. 144, 147; Pub. L. 98-118, §5(a), Oct. 11, 1983, 97 Stat. 804; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-203, title IX, §9156(a), Dec. 22, 1987, 101 Stat. 1330-327; Pub. L. 105-33, title V, §5404(a), Aug. 5, 1997, 111 Stat. 604; Pub. L. 111-5, div. B, title II, §2004, Feb. 17, 2009, 123 Stat. 443.)

REFERENCES IN TEXT

Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (b)(3)(C)(ii), is section 203 of Pub. L. 91-373, title II, Aug. 10, 1970, 84 Stat. 709, which is set out as a note under section 3304 of Title 26, Internal Revenue Code.

The Internal Revenue Code of 1986, referred to in subsec. (b)(5), (8)(B)(i), is classified generally to Title 26.

AMENDMENTS

2009—Subsec. (b)(10). Pub. L. 111-5 added par. (10).

1997—Subsec. (b)(2)(C). Pub. L. 105-33 added subpar. (C).

1987—Subsec. (c). Pub. L. 100-203 added subsec. (c).

1986—Subsec. (b)(5), (8)(B)(i). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1983—Subsec. (b)(2). Pub. L. 98-118, §5(a)(1), substituted "advance or advances" for "advance" in provisions preceding subpar. (A).

Subsec. (b)(2)(A). Pub. L. 98-118, §5(a)(2), (3), substituted "advances are" for "advance is" and "advances were" for "advance was".

Subsec. (b)(2)(B). Pub. L. 98-118, §5(a)(4), substituted "advances was completed" for "advance was completed".

Subsec. (b)(3)(A). Pub. L. 98-21, §514, which directed substitution of "prior to" for "not later than" was executed, as the probable intent of Congress, by making that substitution the first time the phrase appeared following "Secretary of Treasury" and not the second time that phrase appeared.

Subsec. (b)(3)(C)(i). Pub. L. 98-21, §511(c), substituted, after subcl. II, provision that no interest shall accrue on such deferred interest for provision that any interest the time for payment of which was deferred under this subparagraph would bear interest in the same manner as if it had been an advance made on the day on which it would have been required to be paid but for this subparagraph.

Subsec. (b)(7). Pub. L. 98-21, §511(b), struck out " and before January 1, 1988" after "April 1, 1982".

Subsec. (b)(8), (9). Pub. L. 98-21, §511(a), added pars. (8) and (9).

1982—Subsec. (b)(3)(C). Pub. L. 97-248 added subpar. (C).

1981—Subsec. (a). Pub. L. 97-35, §2407(b)(2), designated existing provision as subsec. (a).

Subsec. (b). Pub. L. 97-35, §2407(a), added subsec. (b).

1960—Pub. L. 86-778 amended section generally, designating provisions constituting subsec. (a) as entire section, substituting “that balance of advances, made to such State under section 1321 of this title, specified in the request” for “any remaining balance of advances made to such State under section 1321 of this title” and inserting “in reduction of such balance” and omitting subssecs. (b) and (c) pertaining to appropriations and repayable advances which were incorporated in sections 1101(d)(1) and 1323 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title V, §5404(b), Aug. 5, 1997, 111 Stat. 604, provided that: “The amendments made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9156(b), Dec. 22, 1987, 101 Stat. 1330-327, provided that: “The amendment made by subsection (a) [amending this section] shall apply to interest paid on advances made on or after the date of the enactment of this Act [Dec. 22, 1987].”

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-118, §5(b), Oct. 11, 1983, 97 Stat. 804, provided that: “The amendments made by this section [amending this section] shall apply to advances made on or after April 1, 1982.”

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §274(b), Sept. 3, 1982, 96 Stat. 558, provided that: “The amendment made by subsection (a) [amending this section] shall apply to interest required to be paid after December 31, 1982.”

§ 1323. Repayable advances to Federal unemployment account

There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances, such sums as may be necessary to carry out the purposes of this subchapter. Amounts appropriated as repayable advances shall be repaid by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this section shall be credited against, and shall operate to reduce, any balance of advances repayable under this section. Whenever, after the application of sections 1101(f)(3) and 1102(a) of this title with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances. Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar

month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.

(Aug. 14, 1935, ch. 531, title XII, §1203, as added Aug. 5, 1954, ch. 657, §3, 68 Stat. 672; amended Pub. L. 86-778, title V, §522(a), Sept. 13, 1960, 74 Stat. 979; Pub. L. 91-373, title III, §304(c), Aug. 10, 1970, 84 Stat. 716; Pub. L. 98-135, title II, §205(a), Oct. 24, 1983, 97 Stat. 861; Pub. L. 100-203, title IX, §9155(b), Dec. 22, 1987, 101 Stat. 1330-327.)

PRIOR PROVISIONS

Provisions similar to those comprising the first sentence of this section were contained in section 1322(c), act Aug. 14, 1935, ch. 531, title XII, §1202(c), as added Aug. 5, 1954, ch. 657, §3, 68 Stat. 672, prior to amendment by Pub. L. 86-778.

AMENDMENTS

1987—Pub. L. 100-203 struck out “(without interest)” after “account, as repayable advances” and “, without interest,” after “shall be repaid”, and inserted sentence at end relating to amounts appropriated as repayable advances for purposes of this subsection.

1983—Pub. L. 98-135 inserted provision requiring that amounts appropriated as repayable advances be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose, and that any amount transferred as a repayment under this section be credited against, and operate to reduce, any balance of advances repayable under this section.

1970—Pub. L. 91-373 inserted reference to section 1102(a) of this title.

1960—Pub. L. 86-778 amended section generally, substituting provisions relating to repayable advances to the Federal unemployment account for former provision defining “Governor” and now incorporated in section 1324 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to advances made on or after Dec. 22, 1987, see section 9155(d) of Pub. L. 100-203, set out as a note under section 1103 of this title.

RETRANSFER OF AMOUNTS TRANSFERRED FROM FEDERAL UNEMPLOYMENT ACCOUNT TO EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT AS OF SEPTEMBER 30, 1983

Pub. L. 98-135, title II, §205(b), Oct. 24, 1983, 97 Stat. 861, provided that: “Any amounts transferred from the Federal unemployment account to the employment security administration account as of September 30, 1983, shall be transferred back to the Federal unemployment account.”

§ 1324. “Governor” defined

When used in this subchapter, the term “Governor” includes the Mayor of the District of Columbia.

(Aug. 14, 1935, ch. 531, title XII, §1204, as added Pub. L. 86-778, title V, §522(a), Sept. 13, 1960, 74 Stat. 979; amended 1967 Reorg. Plan No. 3, §401, eff. Nov. 3, 1967, 32 F.R. 11669, 81 Stat. 951; Pub. L. 93-198, title IV, §421, Dec. 24, 1973, 87 Stat. 789.)