

Understanding Payment of Interest on Federal Loans to State Unemployment Trust Funds

Federal law requires that state unemployment insurance (UI) programs continue to pay benefits to eligible claimants even if the state's unemployment trust fund becomes insolvent. Title XII of the Social Security Act contains provisions for borrowing from the U.S. Treasury under these circumstances. As unemployment has climbed over the past three years, many state trust funds have been depleted. Currently, 31 states and the Virgin Islands have outstanding loans of \$41 billion from the Federal Unemployment Account.ⁱ

- ❑ **States cannot pay interest with regular UI taxes.** Generally, interest charges accrue if loans are not repaid before certain mandatory repayment dates. (Federal UI loans are interest free if made and repaid between January 1 and September 30 of the same calendar year.) However, under the American Recovery and Reinvestment Act, interest on trust fund loans was waived through CY2010. With the expiration of that law's waiver provision, states with outstanding loans will be legally obligated to repay the interest on their loans that accrue after January 1, 2011. The first interest payments are due on October 1, 2011 and cannot by law be paid from the state's trust fund, which can only be used to pay benefits or repay principal on any borrowing. The interest rate on federal loans is currently 3.92 percent. Interest due on federal loans is expected to total \$1.4 billion in 2011.
- ❑ **States cannot ignore this payment.** Failure to pay the interest on federal trust fund loans in a timely manner has serious consequences for states and the states' employers. If a state does not make interest payments when due, federal funding to administer the state's unemployment insurance program can be withdrawn. In addition, all of the state's contributing employers risk losing the 5.4 percent federal tax credit that they receive based on federal approval of the state's UI program. Thus their federal UI tax bill could go up from \$56 per employee to \$434 per employee.
- ❑ **There is precedent for employers bearing this cost.** There is precedent for employers bearing this cost. Prudent states should enact a special interest assessment on employers. Twenty-two states already have some form of interest assessment in their laws.ⁱⁱ In these states, funds collected through the assessment are segregated from the UI trust fund and are used solely to repay federal interest; they are sometimes known as special interest surcharges. States should be prepared to enact this assessment at the start of their 2011 legislative session so funds will be

available by October 1st. While states are legally free to pay interest costs from any revenue source (except the UI trust fund), pushing the costs of insolvency on to state general funds is poor public policy. Financing of the unemployment trust fund is an employer responsibility and relieving the employer community of responsibility for interest on borrowing masks the need to make financing reforms necessary to restore solvency.

- **Next steps for advocates:** Table 1 indicates trust fund loan status and whether the state has an existing interest surcharge. The U.S. Department of Labor lists 16 states with a current trust fund loan as not having an interest surcharge. In these states, advocates should confer with policy makers and legislators to make sure there is a plan to pay interest, and advocate for the enactment of a new assessment on employers to pay this cost.

Table 1 - States with Current Trust Fund Loans -Existing Interest Surcharge Status

State	Has an Interest Surcharge	State	Has an Interest Surcharge
Alabama	Yes	Michigan	Yes
Arizona	No	Minnesota	Yes
Arkansas	Yes	Missouri	Yes
California	No	Nevada	No
Colorado	Yes	New Jersey	Yes
Connecticut	Yes	New York	Yes
Delaware	Yes	North Carolina	No
Florida	No	Ohio	No
Georgia	No	Pennsylvania	Yes
Hawaii	No	Rhode Island	No
Idaho	Yes	South Carolina	Yes
Illinois	No	Texas	Yes
Indiana	No	Vermont	No
Kansas	No	Virginia	No
Kentucky	No	Wisconsin	Yes
Massachusetts	No		

Source: U.S. Department of Labor, Comparison of State Unemployment Insurance Laws, 2010

Model Legislation: Maine

Maine Revised Stat. Title 26§1241.

Special assessment

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advance" means a loan made from the Federal Unemployment Trust Fund to the state's Unemployment Compensation Fund on which interest will be due and payable if the loan is not repaid by the due date set by the Federal Government.

B. "Anticipated interest" means the amount of interest that will be due on an advance under federal law on its interest due date if the advance is not repaid by the interest due date.

C. "Assessment quarter" means the calendar quarter in which an advance is received.

D. "Assessment rate" means a rate equal to the percentage, rounded to the next highest 1/10th of 1%, derived if the amount of interest that will be due if an advance is not repaid by the interest due date, minus any existing unobligated and unencumbered balance in the Federal Advance Interest Fund, is divided by the taxable wages reported by contributing employers for the calendar quarter in the immediately preceding calendar year that corresponds to the assessment quarter.

E. "Federal Advance Interest Fund" means the fund defined in section 1165.

F. "Interest due date" means:

(1) The date on which anticipated interest is due to the Federal Government on an advance which was not repaid by the due date set by the Federal Government; or

(2) If the Federal Government allows the State to defer repayment of an advance and anticipated interest on the advance, the date on which the deferred repayment is due to the Federal Government.

G. "Subsequent assessment quarter" means a calendar quarter subsequent to the assessment quarter.

2. **Special assessment.** If an advance has not been repaid during the assessment quarter for the advance and the balance in the Federal Advance Interest Fund is insufficient to pay the anticipated interest charges that will be due on the advance on its interest due date, and if, using standards adopted under the Maine Administrative Procedure Act, the Commissioner of Labor determines that it is probable that the advance will not be repaid by the interest due date, then the Commissioner of Labor may assess a special assessment for that assessment quarter. The amount of an employer's special assessment shall be determined by multiplying the wages for employment taxable to an employer under section 1221 for that quarter by the assessment rate. Assessments shall be paid into the Federal Advance Interest Fund for use in paying interest on the advance.

After the money is received from the special assessment for the assessment quarter, if the balance in the Federal Advance Interest Fund is still not sufficient to pay the interest charges that will be due on the advance on its interest due date, then the commissioner may assess further special assessments in subsequent assessment quarters to raise the balance in the Federal Advance Interest Fund up to a balance sufficient to pay the interest charges. All provisions in this section that apply to the special assessment also shall apply to these further special assessments.

No special assessments may be assessed if sufficient unobligated and unencumbered funds are present in the Federal Advance Interest Fund to pay the anticipated interest on the advance on its due date.

3. Employers liable for special assessment. Each employer subject to this chapter, other than those liable for payments in lieu of contributions, shall be liable for special assessments.

4. Receipts. All receipts collected from a special assessment, including interest, fines and penalties on special assessments not paid when due, shall be paid into the Federal Advance Interest Fund .

5. Experience rating records. No special assessment may be credited to any employer's experience rating record.

6. Other provisions of chapter. All provisions of this chapter and rules promulgated under this chapter regarding payments, time limits, dates of payment, reports, interest and penalties on amounts not paid by employers when due, fines, liens and warrants which apply to the collection of contributions also shall apply to the collection of special assessments

ⁱ NELP's count includes Texas which has gone to the private market to pay off its trust fund loan.

ⁱⁱ In addition, two states (Louisiana and West Virginia) have interest assessments that are used to pay costs associated with bonding of trust fund debt.