DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Training and Employment Guidance Letter Interpreting Federal Law

The Employment and Training Administration interprets federal law requirements pertaining to unemployment compensation (UC) and public employment services (ES). These interpretations are issued in Training and Guidance Letters (TEGLs) to the State Workforce Agencies. The TEGL described below is published in the **Federal Register** in order to inform the public.

TEGL 18–01, Change 1

TEGL 18–01, Change 1, using a Q & A format, answers additional questions related to the appropriate uses of the Reed Act distribution made on March 13, 2002.

Dated: December 1, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Employment and Training Administration Advisory System, U.S. Department of Labor, Washington, DC 20210

CLASSIFICATION: Reed Act
CORRESPONDENCE SYMBOL: DL
DATE: March 19, 2003

Training and Employment Guidance Letter No. 18–01 Change 1

To: All State Workforce Liaisons, Allstate Workforce Agencies, Allstate Worker Adjustment Liaisons, Allone-Stop Center System Leads

From: Emily Stover DeRocco, Assistant Secretary

Subject: Reed Act—Questions and Answers

1. *Purpose.* To answer questions related to the use of Reed Act funds that have arisen since the issuance of Training and Employment Guidance Letter (TEGL) 18–01.

2. *References.* Section 209 of the Temporary Extended Unemployment Compensation Act of 2002 (TEUCA), which is Title II of the Job Creation and Worker Assistance Act of 2002, P.L. No. 107–147, signed by the President on March 9, 2002; Title IX of the Social Security Act (SSA); the Federal Unemployment Tax Act (FUTA); the Wagner-Peyser Act; TEGL 18–01 (67 FR 34730 (May 15, 2002)); TEGL 24–01; and Unemployment Insurance Program Letter (UIPL) 39–97 (62 FR 63960 (December 3, 1997)), UIPL 39–97, Change 1 (January 16, 2002) and UIPL 20–02 (April 4, 2002).

3. *Background.* TEGL 18–01 described the permissible uses of the $8 billion Reed Act distribution that was made to the states' accounts in the Unemployment Trust Fund on March 13, 2002. In general, this distribution is available for the payment of unemployment compensation (UC) and the administration of state UC laws and public employment offices.

RESCISSIONS: None
EXPIRATION DATE: Continuing

Since the issuance of TEGL 18–01, the Department has received questions concerning permissible uses of Reed Act funds. In addition, the Department has reviewed state legislative proposals appropriating the Reed Act funds, some of which raised issues of consistency with federal law. The following Questions and Answers address these matters.

4. *Action.* State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of Federal law that are contained in this advisory.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachment.*

Reed Act Distributions Under the Temporary Extended Unemployment Compensation Act of 2002—Questions and Answers

Attachment—Reed Act Distributions Under the Temporary Extended Unemployment Compensation Act of 2002—Questions and Answers

1. *Question:* Since my state's legislature meets in session only for short periods each year, my state's law delegates certain legislative functions, including certain appropriation functions, to the Governor. May the Governor ''appropriate'' Reed Act funds under this delegation?

Answer: No. Question and Answer 9 in Attachment I to TEGL 18–01 explains that Section 903(c)(2), SSA, provides that a state may use Reed Act funds for administrative purposes only ''pursuant to a specific appropriation made by the legislative body of the State.'' (Emphasis added.) That section of the SSA goes on to provide that a withdrawal may be made for the payment of administrative expenses ''if and only if'' the appropriation law meets certain requirements. Among these requirements is that ''the purposes and the amounts'' must be ''specified in the law making the appropriation.'' Senate Report No. 1621 elaborated on the appropriation requirement. It states that a state may use Reed Act funds for administrative expenses only ''through a special appropriation act of its legislature'' and that such use of Reed Act funds is ''subject to rigid control by the state legislature (which control is specified in the bill in detail).'' (Emphasis added. 1954 U.S.C.C.A.N. 2909, 2910, 2914.)

2. *Question:* May Reed Act funds be used for administrative expenses incurred before the date of enactment of the state appropriations?

Answer: No. Under Section 903(c)(2)(C), SSA, a state's Reed Act appropriation law must provide that ''the expenses are incurred after'' the date of the enactment of the appropriation.

3. *Question:* May my state use Reed Act funds to deliver employment services outside its One-Stop system?

Answer: In general, no. Reed Act funds may be used for expenses incurred by a state ''for the administration of its unemployment compensation law and public employment offices.'' As noted in TEGL 18–01, ''administration of * * * public employment offices'' means ''any function fundable under the Wagner-Peyser Act.'' Section 7(e), Wagner-Peyser, provides that ''all job search, placement, recruitment, labor employment statistics, and other labor exchange services authorized under subsection (a) shall be provided, consistent with the other requirements of this Act, as part of the one-stop delivery system established by the state.''

Section 7(b)(2), Wagner-Peyser, does authorize provisions of services outside the One-Stop. However, these services may be provided only to ''groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate local workforce investment board and chief elected official or officials or other public agencies or private nonprofit organization.'' (Emphasis added.) Thus, for Reed Act purposes, moneys may be expended outside the one-stop system on these groups with special needs only if there is an agreement with the state's ES agency.

Note that the state's share of the $100 million Reed Act distributions made in each of fiscal years 2000 through 2002 may be used only for UC administration. (See Question and Answer 20 in Attachment I to TEGL 18–01.)

4. *Question:* May my state legislature appropriate Reed Act funds to an agency other than the state agency (or agencies) administering the UC program and the employment service (ES) program?

Answer: No. While nothing prohibits the UC or ES agencies from providing Reed Act funds to other agencies to perform permissible Reed Act activities (*e.g.*, information technology services supporting the UC and ES agencies), the appropriation must be made to the UC and/or ES agency.

The intent behind the Reed Act was to allow states to supplement their federal UC and ES grants. (See, for example, H. Rep. 21 (1954 U.S.C.C.A.N. 2909–2911); H. Rep. 251, 107th Cong. 1st Sess. 58–59.) Therefore, just as the state agency administering the state's UC law receives the federal UC administrative grant, the same agency is to receive Reed Act funds for administering the UC law. Similarly, just as the state agency administering the state's ES program receives the Wagner-Peyser grant, the same agency is to receive Reed Act funds for administering its public employment offices.

Appropriating Reed Act funds only to the state UC and/or ES agencies, which have expertise in determining what are permissible UI and Wagner-Peyser Act functions, helps assure that Reed Act funds are used only for permissible purposes. This in turn will help avoid federal questions regarding use.

If the state legislature appropriated Reed Act funds to an agency other than the state agency administering the state UC or ES programs prior to the effective date of this TEGL, the Department will not raise any issues with respect to the appropriation to such other agency. However, the state UC and/or ES agencies, as appropriate, should work with such other state agency to assure that Reed Act funds are used consistently with federal law requirements.

5. *Question:* May Reed Act funds be used to pay travel expenses incurred by trainees?

Answer. Only to the same extent Wagner-Peyser Act funds may be used for this purpose. Generally, Wagner-Peyser Act funds may not pay for transportation costs, but there are two exceptions:

• Section (7)(b)(2) of the Wagner-Peyser Act discusses ''services for groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate workforce investment board and chief elected official or officials or other public agencies or private nonprofits organization.'' Costs of transporting members of such groups may be funded from Reed Act funds.

• Section 7(b)(3), Wagner-Peyser, identifies ''the extra costs of exemplary models for delivering'' Wagner-Peyser services as an allowable use of Wagner-Peyser funds. If transportation were part of an exemplary service delivery model for such services, it may be funded from Reed Act.

In both cases, transportation costs would be allowable only if the transportation involves transporting customers to enable them to access and receive employment services funded under the Wagner-Peyser Act or the Reed Act.

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DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date on notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
RI030001 (Jun. 13, 2003)

Volume II

Pennsylvania
PA030001 (Jun. 13, 2003)
PA030002 (Jun. 13, 2003)
PA030003 (Jun. 13, 2003)
PA030004 (Jun. 13, 2003)
PA030005 (Jun. 13, 2003)
PA030006 (Jun. 13, 2003)
PA030007 (Jun. 13, 2003)
PA030008 (Jun. 13, 2003)
PA030009 (Jun. 13, 2003)
PA0300010 (Jun. 13, 2003)
PA0300013 (Jun. 13, 2003)
PA0300014 (Jun. 13, 2003)
PA0300016 (Jun. 13, 2003)
PA0300018 (Jun. 13, 2003)
PA0300019 (Jun. 13, 2003)
PA0300021 (Jun. 13, 2003)
PA0300023 (Jun. 13, 2003)
PA0300024 (Jun. 13, 2003)
PA0300025 (Jun. 13, 2003)
PA0300026 (Jun. 13, 2003)
PA0300030 (Jun. 13, 2003)
PA0300031 (Jun. 13, 2003)
PA0300032 (Jun. 13, 2003)
PA0300033 (Jun. 13, 2003)
PA0300040 (Jun. 13, 2003)
PA0300042 (Jun. 13, 2003)
PA0300052 (Jun. 13, 2003)
PA0300059 (Jun. 13, 2003)
PA0300060 (Jun. 13, 2003)
PA0300061 (Jun. 13, 2003)
PA0300065 (Jun. 13, 2003)
West Virginia
WV030001 (Jun. 13, 2003)
WV030002 (Jun. 13, 2003)
WV030003 (Jun. 13, 2003)
WV030006 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)

Volume III

Kentucky
KY030003 (Jun. 13, 2003)
KY030025 (Jun. 13, 2003)
KY030027 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)
KY030035 (Jun. 13, 2003)
Mississippi
MS030003 (Jun. 13, 2003)
MS030050 (Jun. 13, 2003)
MS030055 (Jun. 13, 2003)
MS030056 (Jun. 13, 2003)

Volume IV

None

Volume V

Louisiana
LA030053 (Jun. 13, 2003)

Volume VI

Colorado
CO030001 (Jun. 13, 2003)
CO030002 (Jun. 13, 2003)
CO030003 (Jun. 13, 2003)
CO030004 (Jun. 13, 2003)